



TOWN OF WAYNESVILLE, NC

Board of Aldermen – Regular Meeting

Town Hall, 9 South Main Street, Waynesville, NC 28786

Date: **May 27, 2014** Time: **7:00 p.m.**

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(828) 452-2491
townclerk@townofwaynesville.org

A. CALL TO ORDER - *Mayor Gavin Brown*

1. Welcome/Calendar/Announcements
2. Adoption of Minutes

Motion: *To approve the minutes of May 13, 2014 (regular meeting), and April 22, 2014 (closed session) as presented [or as corrected].*

B. PUBLIC HEARINGS

3. Petition for Annexation – Charles William Messer – #4 and #6 Middleton Drive

Motion: *To approve the petition for annexation and request for sewer service by Charles William Messer for #4 and #6 Middleton Drive as presented.*

4. Land Development Standards Amendment – Quasi-Judicial Hearing Procedure

Motion: *To approve amendments to the Town of Waynesville Code of Ordinances (Sections 15.2 – 15.13), regarding the quasi-judicial hearing process as presented.*

5. Boards and Commissions Composition & Meeting Schedules and Adoption of Board & Commissions Manual

Motion: *To approve amendments the Town of Waynesville Code of Ordinances regarding composition and meeting schedules of town boards and commissions and to adopt the Boards and Commissions manual as presented.*

TOWN OF WAYNESVILLE – REGULAR SESSION AGENDA

May 27, 2014

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C. NEW BUSINESS

D. COMMUNICATIONS FROM STAFF

6. Town Manager – Marcy Onieal

- Employee Transitions
- Shining Rock Trail Fire Report
- Legislative Updates
 - Business Privilege License
 - LJA Merger
 - Other
- Board Appointments
 - TOW Boards & Commissions
 - TDA
 - Pigeon River Fund
- IT Updates
 - Exchange conversion completed
 - Mayor & Board email addresses
 - Facebook Promotions (Where's Wayne Wednesdays)
- Project Updates
 - Tennis Court Resurfacing
 - Fleet Propane Conversions
 - Landscaping Plan-PS Operations Center
 - Public Art Installation & Dedication
- Budget Updates
 - County reimbursement - Solid Waste
 - Fire District annexations
 - JSD grant request
 - TDA group marketing request
 - Budget Document/Workshop Agendas

7. Town Attorney – Woody Griffin

E. COMMUNICATIONS FROM MAYOR & BOARD OF ALDERMEN

F. CALL ON THE AUDIENCE

G. ADJOURN



TOWN OF WAYNESVILLE

PO Box 100
 16 South Main Street
 Waynesville, NC 28786
 Phone (828) 452-2491 • Fax (828) 456-2000
www.waynesvillenc.gov

CALENDAR May 27, 2014

2014	
Fri, May 30 9:00 AM – Noon Muni Bldg-Conference Room	Board of Alderman – Budget Work Session
Tue, Jun 3 7:00 – 8:30 PM The Depot, Marion	NC Rural Economic Development Center Rural Roundtable/Strategic Visioning (Registration required; please contact manager)
Tu-We, Jun 3-4 All Day NC General Assembly Raleigh, NC	Chambers of Commerce Day at NC General Assembly (June 3) NCLM Town Hall Day at NC General Assembly (June 4)
Wed, Jun 4 9:30 AM - Noon WCU, Cullowhee	NC Rural Economic Development Center Rural Roundtable/Strategic Visioning (Registration required; please contact manager)
Fri, Jun 6 9:00 AM – 12 Noon Municipal Bldg, Conference Rm	Board of Aldermen-Budget Work Session
Tue, Jun 10 Noon Ferguson Supply by the Pond	Interagency Meeting and Fish Fry Haywood Soil and Water Conservation District
Tue, Jun 10 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session (Budget Public Hearing)
Sat, Jun 14 10:00 AM – 5:00 PM	Appalachian Lifestyle Celebration – Downtown Waynesville Assoc. Street Closure Main Street from Church Street to Justice Center to begin at 8:45 p.m. on Friday June 13th
Sat, Jun 14 9:00 AM	Litter Clean Up – Town of Canton Location TBD
Tue, Jun 17 5:00 PM – light supper avail 5:30 PM – meeting Municipal Bldg, Conference Rm	Board of Aldermen-Budget Worksession (with light supper)
Thu, Jun 19 5:30 PM Laurel Ridge Country Club	Haywood Co. Chamber of Commerce-Annual Banquet
Mon, Jun 23 5:30 dinner/6:00 meeting Maggie Valley Town Hall	Haywood County Council of Governments Town of Maggie Valley Hosting

Tue, Jun 24 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session (Budget Adoption)
Fri, Jun 27 5:30 – 9:00 PM Historic Courthouse Area	Friday Night Street Dance – sponsored by Downtown Waynesville Association, Town Of Waynesville, Smoky Mountain Folk Festival Street closure Depot Street to Justice Center
Fri, Jul 4 11:00 AM – 3:00 PM Main Street	Stars and Stripes Celebration – Kids on Main Parade at 11:00 a.m. – Mayor to lead Street closure at the top of Miller Street
Fri, Jul 4	Independence Day Holiday Town Offices Closed
Tue, Jul 8 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Fri, Jul 11 5:30 – 9:00 PM Historic Courthouse Area	Friday Night Street Dance – sponsored by Downtown Waynesville Association, Town Of Waynesville, Smoky Mountain Folk Festival Street closure Depot Street to Justice Center
Sat, Jul 12 9:00 AM	Litter Clean Up – Haywood County Location TBD
Sat, Jul 19 10:00 AM – 5:00 PM Downtown Waynesville	ArtFest – sponsored by Haywood County Arts Council Street closure from Pigeon to Justice Center to begin at 9:00 p.m. Friday July 18 th
Tue, Jul 22 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Fri, Jul 25 5:30 – 9:00 PM Historic Courthouse Area	Friday Night Street Dance – sponsored by Downtown Waynesville Association, Town Of Waynesville, Smoky Mountain Folk Festival Street closure Depot Street to Justice Center
Sat, Jul 26 10:00 AM – 1:00 PM Downtown Waynesville	Folkmoot Parade of Nations; elected officials to speak at 10:00 a.m. at on the Historic Courthouse steps Street Closure from Justice Center to Academy Street
Mon, Jul 28 6:00 PM Cherokee, Chestnut Tree Inn	Southwestern Commission Annual Dinner
Sat, Aug 2 9:00 AM – Noon Downtown Waynesville	Sarge's 9 th Annual Dog Walk Street Closure from Justice Center to Church Street
Tue, Aug 5 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Fri, Aug 8 5:30 – 9:00 PM Historic Courthouse Area	Friday Night Street Dance – sponsored by Downtown Waynesville Association, Town Of Waynesville, Smoky Mountain Folk Festival Street closure Depot Street to Justice Center
Sat, Aug 9 9:00 AM	Litter Clean Up – Town of Clyde Location TBD
Tue, Aug 19 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session

Mon, Aug 25 5:30 dinner/6:00 meeting Location TBA	Haywood County Council of Governments Haywood County Hosting
Sat, Aug 30 7:00 – 10:00 PM Downtown Waynesville	Block Party Street Dance – sponsored by Downtown Waynesville Association Street Closure Main Street from Church Street to Justice Center
Mon, Sep 1	Labor Day Holiday Town Offices Closed
Tue, Sep 9 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Sat, Sep 13 9:00 AM	Litter Clean Up – Town of Maggie Valley Location TBD
Mon, Sep 22 7:00 PM Cherokee, Chestnut Tree Inn	Southwestern Commission Board Meeting
Tue, Sep 23 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Sat, Oct 11 10:00 AM – 5:00 PM Downtown Waynesville	Church Street Art & Craft Show - sponsored by Downtown Waynesville Association Street closure from Pigeon Street to Justice Center to begin at 9:00 p.m. Friday Oct 10th
Tue, Oct 14 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Sat, Oct 18 10:00 AM – 5:00 PM Downtown Waynesville	Haywood County Apple Festival – Co-sponsored by Haywood Cooperative Extension Svcs, Haywood Apple Growers, Chamber, DWA and TOW Street closure from Pigeon Street to Justice Center to begin at 9:00 p.m. on Friday Oct 17 th
Mon, Oct 27 5:30 dinner/6:00 meeting Municipal Bldg Mtg Room	Haywood County Council of Governments Town of Waynesville Hosting
Tue, Oct 28 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Tue, Nov 11	Veteran’s Day Holiday Town Office Closed
Mon, Nov 24 7:00 PM Cherokee, Chestnut Tree Inn	Southwestern Commission Board Meeting
Tue, Nov 25 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session

Th-Fr, Nov 27-28	Thanksgiving Day Holiday Town Offices Closed
Mon, Dec 8 6:00 PM Downtown Waynesville	Waynesville Christmas Parade – sponsored by the Town of Waynesville, Waynesville Kiwanis Club and DWA Rolling street closure from North Main & Walnut to Bogart’s Restaurant
Tue, Dec 9 7:00 PM Board Room, 9 S. Main	Board of Aldermen Meeting-Regular Session
Sat, Dec 13 6:00 – 9:00 PM Downtown Waynesville	A Night Before Christmas – sponsored by Downtown Waynesville Association Street closure Pigeon Street to Depot Street beginning at 5:00 p.m.
We-Fr, Dec 24-26	Christmas Holiday Town Offices Closed

Board and Commission Meetings – June

June 3 1st Tuesdays 5:30 PM	Board of Adjustment - CANCELLED	Town Hall – 9 S. Main Street
June 4 1st Wednesdays 2:00 PM	Historic Preservation Commission	Town Hall – 9 S. Main Street
June 4 1st Wednesdays 5:30 PM	Waynesville Housing Authority	Waynesville Towers – 65 Church Street
June 12 2nd Thursdays 4:00 PM	Public Art Commission	Town Hall – 9 S. Main Street
June 16 3rd Mondays 5:30 PM	Planning Board	Town Hall – 9 S. Main Street
June 17 3rd Tuesdays 10:00 AM	ABC Board	ABC Office – 52 Dayco Drive
June 17 3rd Tuesdays 5:30 PM	Recreation & Parks Advisory Commission	Rec Center Office – 550 Vance Street
Meets Quarterly; no meeting scheduled for June	Community Action Forum	Police Department Training Room – 9 S. Main Street
Meets as needed; no meeting scheduled for June	Firemen’s Relief Fund Board	Fire Station 1 – 1022 N. Main Street

BOARD/STAFF SCHEDULE

Thu, May 29	HR Manager	Public Employment Law Update Cullowhee, NC
Th-Sa, Jun 19-21	Manager Management Assistant	NC City/County Managers' Association Summer Seminar Charlotte, NC
Fr-Sa, Jul 25 – Aug 9	Town Clerk	Vacation
Su-We, Sep 14-17	Manager Town Clerk	ICMA 100 th Annual Conference Charlotte, NC

MINUTES OF THE TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REGULAR MEETING
MAY 13, 2014

THE WAYNESVILLE BOARD OF ALDERMEN held their regular meeting on Tuesday, May 13, 2014 at 7:00 p.m. in the board room of Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

Mayor Brown called the meeting to order at 7:00 p.m. with the following members present:

Mayor Gavin Brown
Alderman Gary Caldwell
Alderman Julia Freeman
Alderman LeRoy Roberson

Alderman J. Wells Greeley was absent with notice, due to out of town travel.

The following staff members were present:

Marcy Onieal, Town Manager
Woodrow Griffin, Town Attorney
Amie Owens, Town Clerk
Andrew Bowen, Management Assistant
David Foster, Public Services Director
Fred Baker, Utilities Director
Eddie Caldwell, Finance Director
Travis Ledford, Public Services, Electric Division
Jeff Stines, Public Services, Water/Sewer Maintenance Division
David Smith, Public Services, Wasterwater Treatment Division

Representing the Media:

Mary Ann Enloe, The Mountaineer

1. Welcome /Calendar/Announcements

Mayor Gavin Brown welcomed everyone to the meeting and asked Manager Onieal to review the calendar events.

Manager Onieal explained that there were not many changes to the calendar and highlighted several dates including:

- May 14 – Opening of the Legislative Short Session in Raleigh
- May 15 – Retirement Reception for Paul Benson, Planning Director 3 p.m. to 5 p.m.
- May 15 – Community Needs Meeting – 3:30 p.m. at the Senior Resource Center
- May 22 – Downtown Waynesville Association Board Appreciation Breakfast – 8:30 a.m. at Town Hall
- June 3 and June 4 - Town Hall Day at the NC General Assembly
- June 4 - Rural Economic Development Roundtable at WCU

Mayor Brown added that the last meeting of the Haywood County Economic Development Commission would be held on May 15 at 4:00 p.m.

2. Revisions to Budget Workshop Calendar

Manager Onieal explained that due to board members' scheduling conflicts, the originally planned budget workshop schedule is being modified. She proposed Friday, June 6 at 9:00 a.m. and Tuesday, June 17 at 5:30 p.m. for the special called meetings. Manager Onieal explained that the Finance Director is working on the budget document, which hopefully will be ready for distribution at the May 27 Board of Aldermen meeting.

The motion to revise the Budget Workshop Calendar was approved by consensus. The previously approved budget workshop on May 30, 2014 is cancelled and an additional budget workshop on June 17 at 5:30 p.m. in the Municipal Building, 16 S. Main Street was added.

3. Adoption of Minutes

Alderman Caldwell made a motion, seconded by Alderman Freeman, to approve the minutes of the April 22, 2014 (regular meeting session) as presented. The motion carried unanimously.

The closed session minutes from April 22, 2014 will be presented for approval at the next regularly scheduled meeting.

4. Proclamation – National Public Works Week – May 18-24

Mayor Brown read a proclamation declaring May 18 – 24 as Public Works Week in the Town of Waynesville. Public Works Week is observed nationally and is held in conjunction with the American Public Works Association, who recognizes the contributions of Public Works professionals to the health, safety and welfare of citizens and visitors. The proclamation was presented to Public Services Director, David Foster who was accompanied by several staff members including the newest Public Services employee, Travis Ledford, and the longest serving employee David Smith. Another employee, Jeff Stines, was recognized for obtaining his Utility Management certification and as the March Public Services employee of the month.

All of the Aldermen present thanked the Public Services Department for their commitment and complimented them for their professionalism.

Proclamation – National Police Week – Peace Officers Memorial Day

Mayor Brown added that he had also signed a proclamation for National Police Week (May 11 – 17) and Peace Officers Memorial Day (May 15). Chief Hollingsed will receive this proclamation.



Town of Waynesville

PROCLAMATION

PUBLIC WORKS WEEK MAY 18-24, 2014

WHEREAS, the Town of Waynesville relies on Public Works infrastructure to ensure the safety, health, and well-being of its citizens and guests; and

WHEREAS, Public Works professionals, managers, administrators, and other allied support in the public and private sector, plan, design, build, operate, and maintain transportation, water supplies, sewage and refuse disposal, public facilities, and other structures and facilities essential to serving Town citizens and guests; and

WHEREAS, our Town is safer and more efficient where citizens can enjoy the quality of life that makes Waynesville special because of the dedication of Public Works professionals; and

WHEREAS, the Town of Waynesville joins the American Public Works Association and other interested agencies and organizations in recognizing the contributions of Public Works professionals to the health, safety, welfare of the Town;

NOW, THEREFORE, I, Gavin A. Brown, Mayor of the Town of Waynesville, do hereby proclaim May 18-24, 2014, as "**PUBLIC WORKS WEEK**" in the Town of Waynesville, and commend its observance to all Town citizens and treasured guests.

IN WITNESS WHEREOF, I have hereunto set my hand and affix the seal of the Town of Waynesville on this the 6th day of May, 2014.



TOWN OF WAYNESVILLE

Gavin A. Brown
Mayor

PROCLAMATION
NATIONAL POLICE WEEK
May 11 – 17, 2014
And
PEACE OFFICERS MEMORIAL DAY
May 15, 2014

WHEREAS, the Congress and President of the United States have designated the week of May 11 – 17, 2014 as National Police Week and Thursday, May 15, 2014 as Peace Officers Memorial Day, and

WHEREAS, the members of the law enforcement play an essential role in safeguarding the rights and freedoms of the citizens of the Town of Waynesville, and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards and sacrifices of their law enforcement officers, and

WHEREAS, the men and women of the law enforcement agency of the Town of Waynesville serve the people by safeguarding life and property, protecting them against violence and disorder and providing a vital public service.

NOW, THEREFORE, I, Gavin A. Brown, Mayor of the Town of Waynesville, do hereby proclaim the week of May 11 - 17, 2014 as National Police Week and May 15, 2014 as Peace Officers Memorial Day for the Town of Waynesville and urge all citizens to recognize these officers' faithful and loyal devotion to their responsibilities.

This the 13th day of May, 2014.



TOWN OF WAYNESVILLE

Gavin A. Brown
Mayor

B. REPORTS & PRESENTATIONS

5. Waynesville Housing Authority Annual Update

Mr. Randolph Janes, Executive Director of the Waynesville Housing Authority (WHA) provided an annual update. Mr. Janes has worked for the WHA for 25 years and was named as the Executive Director in late April. Mr. Janes explained that through the federal Capital Funds Grant the WHA has been able to remodel the kitchens and bathrooms of the 100 rental units. Currently, WHA is working with Town of Waynesville inspections to ensure that improvements meet codes; some improvements include replacing outlets, lighting, replacing sidewalks and parking lots at various facilities. Mr. Janes noted that approximately \$125,000 is received annually for these improvements through Housing Urban Development (HUD). He added that the Waynesville Towers (a 62 unit building) WHA is in the process of recaulking the outside of the building and painting with a colored sealant that will both seal and beautify the building. Both of the building's elevators have been updated and meet requisite codes.

Mr. Janes explained that as units become vacant, they are updated. He added that the minutes of WHA board meetings will be forwarded to the Town Clerk monthly. Mayor Brown asked how long the WHA had been in operation. Mr. Janes confirmed operations since 1971. Mayor Brown congratulated Mr. Janes on his new position and thanked him for the report.

6. Haywood County Fair

Mr. Sam Smith representing the County Fair Advisory Council of the Haywood County Fairgrounds provided information regarding the upcoming Haywood County Fair (Fair). Mr. Smith noted that the Fairgrounds hosts 65 to 70 events annually with the Fair being the largest event. He provided the dates Aug 19 – 25 for the 2014 County Fair and added that the Council is gathering sponsorships. Mr. Smith referenced the sponsor levels and described the different ways that sponsors are acknowledged including an insert that is in the Mountaineer just prior to the Fair. Mr. Smith concluded by thanking the board for their consideration for sponsorship.

Mayor Brown asked how many vendors would be at the Fair. Mr. Smith noted that approximately 60 vendors participate each year with close to 50 sponsors. Mayor Brown inquired as to the total number of people attending the Fair each year. Mr. Smith answered that the estimated total is between 12,000 and 15,000 annually. He added that the Fairgrounds does charge parking fees, concessions and vendor space.

Mayor Brown thanked Mr. Smith for the information and the board will consider whether to be a sponsor.

C. NEW BUSINESS

7. Waynesville First United Methodist Church – Street Closure Request

Manager Onieal explained that Reverend Becky Brown from Waynesville First United Methodist Church submitted a request to close Academy Street between the intersections of Haywood Street and Tate Street for three events.

- Pig Pickin’ – Church Community Event on Sunday, June 1 beginning at 4pm and ending at 8pm.
- Back to School Bash – Church Community Event on Sunday, August 24 beginning at 4 and ending at 7pm.
- Trunk or Treat – Community Event on Friday, October 31 beginning at 5pm and ending at 8pm.

Alderman Roberson made a motion, seconded by Alderman Freeman, to approve the various street closure requests from Waynesville First United Methodist Church for the remainder of 2014 as presented. The motion carried unanimously.

8. Call for Public Hearing – Land Development Standards Amendment – Quasi-Judicial Hearing Procedure

Manager Onieal explained that proposed Land Development Standards required updating to meet legislative requirements. The proposed amendment:

- Changes public notice of Variance and Appeal requests to remove published notice and add mailed notice to affected and adjacent property owners.
- Enables the Clerk to the Board as well as the Chair to swear in witnesses.
- Clarifies the requirements for written notice of decision and the delivery of that notice.
- Adds provisions for an expedited hearing process in cases where enforcement actions are not stayed until the hearing is held.
- Eliminates the super-majority (4/5ths) vote required to uphold an appeal of an administrative decision.
- Requires that the Administrator appear as a witness in cases of appeal of an administrative decision.
- Eliminates the “practical difficulties” language from considering the granting of a variance.
- Eliminates the test that a variance may not be properly granted if the applicant can make reasonable use of the property without the variance.

Manager Onieal noted that the action required was to call for a public hearing.

Alderman Caldwell made a motion, seconded by Alderman Roberson, to call for a public hearing to consider amending the Town of Waynesville Code of Ordinances (Sections 15.2 – 15.13), regarding the quasi-judicial hearing process for Tuesday, May 24, 2014 at 7:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 9 South Main Street. The motion carried unanimously.

9. Call for Public Hearing – Boards and Commissions Composition and Meeting Schedules and Adoption of Board & Commissions Manual

Manager Onieal explained that Ms. Owens had compiled information on all of the Boards and Commissions including the vital records, procedures, terms, duties and powers, and processes for member replacements and will include the most current rosters for each group.

Manager Onieal explained that in addition to the Boards and Commissions Manual, a revision to the Code of Ordinances related to the membership and meeting schedules would be presented which would allow for the Board of Aldermen to administratively change the membership number or meeting

schedule in the Boards and Commissions Manual without having to amend the Code of Ordinances each time such a change was requested.

Manager Onieal noted that the action required was to call for a public hearing.

Alderman Freeman made a motion, seconded by Alderman Roberson, to call for a public hearing to consider amending the Town of Waynesville Code of Ordinances regarding composition and meeting schedules of town boards and commissions and to consider adoption of a Boards and Commissions Manual on May 27, 2014 at 7:00 p.m., or as soon thereafter as possible, in the Board Room of Town Hall, 9 South Main Street. The motion carried unanimously.

10. Update on Wholesale Power Market

Kevin O'Donnell, Nova Energy Consultants provided an update regarding the Wholesale Power Market. His presentation included information on the Request for Proposal (RFP) process to date, an analysis of proposals received, information on the pros and cons of potentially leaving the existing vendor, Duke Energy and preliminary recommendations related to contract review and potential timetable for action.

Brief discussion was held. Mr. O'Donnell will forward contract information to Mr. Griffin and staff for review and comment. Mr. O'Donnell will update the Board as necessary. Mayor Brown thanked Mr. O'Donnell for his expertise and for his analysis and presentation.

D. COMMUNICATIONS FROM STAFF

11. Town Manager – Marcy Onieal

Manager Onieal noted that the Planning Director position would be posted soon and that Mr. Benson has agreed to serve on a contract basis beginning July 1 until his successor is appointed. This will allow for the completion of some current projects and provide an opportunity to work with the new individual hired. In the interim, Utilities Director Fred Baker will serve as primary contact and temporary supervisor for the Planning Department, while Manager Onieal will staff Planning Board and Board of Adjustment as needed and Town Clerk Amie Owens and Administrative Assistant Ginny Boyer will staff Historic Preservation Committee.

Manager Onieal explained that the most recent Citizen Police Academy has graduated. She praised the program and the commitment displayed by participants. Manager Onieal commended staff for their instruction on all facets of law enforcement and for a well-balanced and comprehensive program. She noted that there were 23 individuals who graduated from this class.

Manager Onieal complimented the Mayor for his outstanding job emceeding the regional Opt-In meeting with over 300 in attendance. A first draft of the final report from this regional planning effort has been emailed to all Board members. Manager Onieal explained that the Opt In effort provides an opportunity to look at the future of the region from all facets including natural resources, planning, growth and development.

Manager Onieal provided an IT Update explaining that the implementation of the exchange/VOA is progressing. All town email addresses will be changing May 19. Manager Onieal added that while VC3 staff is onsite, testing of applications will begin and information will be moved to the cloud. The entire process should be completed by late summer.

Manager Onieal shared that the Wade/Tomlinson property transfer has concluded. Copies of the deeds are with the appropriate parties.

Manager Onieal highlighted that sites within Waynesville and Haywood County would be part of a family film production entitled "Chasing Grace" by an independent feature film producer out of Charlotte. Greenhill Cemetery has been selected for a funeral scene, with local homes and locations such as the 1st Baptist Church, Wine Cellar, Municipal Building and Canton Police Department being used in the film.

Manager Onieal concluded by noting that the Commission for Clean County Waynesville litter pick up on Highway 276/Pigeon Street went well with good participation and inmate assistance supervised by the Sheriff's Department. She thanked the Administrative Services staff and Aldermen for their participation.

12. Town Attorney - Woody Griffin

Attorney Griffin indicated that he is continuing to work on easements related to the Balsam Rest Area project with Mr. Baker.

E. COMMUNICATIONS FROM MAYOR AND BOARD OF ALDERMEN

F. CALL ON THE AUDIENCE

No one addressed the Board.

G. ADJOURN

There being no further business to discuss, Alderman Caldwell made a motion, seconded by Alderman Freeman, to adjourn the meeting at 8:29 p.m. The motion passed unanimously.

ATTEST

Gavin A. Brown, Mayor

Marcia D. Onieal, Town Manager

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: May 27, 2014**

SUBJECT: Petition for Annexation – 4 & 6 Middleton Drive (*Request of Property Owner Charles William Messer*)

AGENDA INFORMATION:

Agenda Location: Public Hearing/Ordinance Amendment
Item Number: 3-B
Department: Administrative Services, Public Services, Utilities Departments
Contact: Amie Owens, Town Clerk
Fred Baker, Utilities Director
David Foster, Public Services Director
Presenter: Marcy Onieal, Town Manager

BRIEF SUMMARY: Property owner Charles William Messer desires that the Town of Waynesville annex property he owns at 4 & 6 Middleton Drive (PIN #86414-16-4410), primarily for the purpose of connecting to existing Town sewer service.

Town of Waynesville Code of Ordinances (Sec. 58-277) requires that a request for connection to sewer service be accompanied by a voluntary petition for annexation into Town corporate limits. NC General Statutes (§160A-31.0-31.1) provide for voluntary annexation by petition of parcels contiguous to the Town’s corporate limits following proper notice and public hearing.

Staff has no objections to this petition for annexation and request for extension of sewer services, and the clerk has certified the sufficiency of the petition. The anticipated financial impact to the Town is negligible. The notice for public hearing was posted on May 5th and May 19th in the Mountaineer.

MOTION FOR CONSIDERATION: To adopt the ordinance for annexation and request for extension of sewer services submitted by Charles William Messer for #4 and #6 Middleton Drive.

FUNDING SOURCE/IMPACT: Mr. Messer will be responsible for all fees incurred with the extension of sewer service to this property.

ATTACHMENTS:

- Ordinance to Annex
- Petition for Annexation
- Metes and Bounds Description of parcel(s) proposed for annexation
- Maps of area proposed for annexation
- TOW Code of Ordinances, Sec. 58-277
- NCGS §160A-31.0 – 31.1
- Notice of Public Hearing – posted on May 5th and May 19th

MANAGER’S COMMENTS AND RECOMMENDATIONS: Open and Close Public Hearing. Approve annexation as requested.

ORDINANCE NO. 03-14

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF
THE TOWN OF WAYNESVILLE, NORTH CAROLINA

WHEREAS, the Board of Aldermen has been petitioned under G.S. 160A-58.1, to annex the area as described in attached Exhibit "A", and

WHEREAS, the Board of Aldermen has by resolution directed the Town Clerk to investigate the sufficiency of said petition; and

WHEREAS, the Town Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at Town Hall at 7:00 p.m., on the 27th day of May 2014, and

WHEREAS, the Board of Aldermen further finds that the area described therein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three miles from the corporate limits of the Town of Waynesville.
- b. No point on the proposed satellite corporate limits is closer to another city than to the Town of Waynesville.
- c. The area described is so situated that the Town of Waynesville will be able to provide services on the same basis within the proposed satellite corporate limits that it provides within the primary corporate limits,
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation,
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits does not exceed ten percent (10%) of the area within the primary corporate limits of the Town of Waynesville; and

WHEREAS, the Board of Aldermen does hereby find as a fact that said petition has been signed by all the owners of real property in the area who are required by law to sign and all other requirements of G.S. 160A-58.1, as amended;

WHEREAS, the Board of Aldermen further finds that the petition is otherwise valid, and that the public health, safety and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described as follows: #4 and #6 Middleton Drive – 3.5152 acres PIN # 8614-16-4410;

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the Town of Waynesville, North Carolina:

Section 1. By virtue of the authority granted by G.S. 160A-58.2, as amended, the following described non-contiguous territory is hereby annexed and made part of the Town of Waynesville, as of the 1st day of June, 2014. Meets and bounds description is in Exhibit "A" attached hereto and incorporated by reference.

Section 2. Upon and after the 1st day of June, 2014, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Waynesville and shall be entitled to the same privileges and benefits as other parts of the Town of Waynesville. Said territory shall be subject to municipal taxes according to G.S. 160A-58.1.

Section 3. The Mayor of the Town of Waynesville shall cause to be recorded in the office of the Register of Deeds of Haywood County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 hereof, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the Haywood County Board of Elections as required by G.S. 163-288.1.

Section 4. Notice of adoption of this ordinance shall be published once, following the effective date of annexation, in a newspaper having general circulation in the Town of Waynesville.

Adopted this 27th day of May, 2014.

TOWN OF WAYNESVILLE

ATTEST:

Gavin A. Brown, Mayor

Amanda W. Owens, Town Clerk

APPROVED AS TO FORM:

Woodrow H. Griffin, Town Attorney

Re: #4 and #6 Middleton Drive – 3.5152 Acres - PIN # 8614-16-4410

BEGINNING at a nail and cap in the pavement in the center line of Camp Branch Road, Ed Walls corner, said point being South 50 deg. 27 min. West 22.79 feet from an iron placed at a locust tree and runs thence with the line of Ed Walls North 50 deg. 27 min. East 652.05 feet to a marked white oak Walls' corner; thence North 51 deg. 36 min. West 181.14 feet to a stake; thence North 59 deg. 40 min. West 87.15 feet to a stake; thence North 36 deg. 14 min. West 23.43 feet to an iron in the fence on top of the ridge; thence South 42 deg. 33 min. West 618.67 feet to a point in the center of the ridge; thence South 42 deg. 33 min. West 618.67 feet to a point in the center of the Camp Branch Road; thence with the center line of the Camp Branch Road South 54 deg. 9 min. East 78 feet and South 43 deg. 9 min. East 122.02 feet to the point of BEGINNING, containing 3.51 acres, more or less. (In the deed to the Grantor, the acreage was shown as 3.42 acres, but this survey indicates it to be slightly more.)

ANNEXATION UPON PETITION OF ALL
OWNERS OF REAL PROPERTY

(G.S. 160A-31, as amended)

April 10, 2014
Date

TO: Board of Aldermen of the Town of Waynesville

1. We, the undersigned owners of real property, respectfully request that the area described below be annexed to the Town of Waynesville.
2. Character of area to be annexed:
 - a. Any area which is contiguous to the corporate limits of the Town of Waynesville may be annexed by petition.
 - b. For purposes of these laws, an area is deemed "contiguous" if, at the time the petition is submitted, the area either abuts directly on the municipal boundary or is separated from the municipal boundary by a street, right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State.
3. The area to be annexed is contiguous to the Town of Waynesville and the boundaries of such territory are as follows:
 - a. Metes and bounds description is attached.
 - b. Tax map of the proposed territory is attached.

NAME Charles William Messer SIGNATURE Charles William Messer
ADDRESS Lot # 4 and # 6 Middleton Drive
Waynesville, N.C. 28786

NAME _____ SIGNATURE _____
ADDRESS _____

NAME _____ SIGNATURE _____
ADDRESS _____

NAME _____ SIGNATURE _____
ADDRESS _____

(Attach additional sheet if necessary)

TRANSFER MADE ON RECORD
Date 7-3-2007
By MM

HAYWOOD COUNTY TAX CERTIFICATION
There are no delinquent taxes due that are a lien
against parcel number(s) 2007-0000
David B. Francis, Haywood County Tax Collector
Date 7-3-2007 By DF



2007663227
HAYWOOD CO, NC FEE \$23.00
STATE OF NC REAL ESTATE EXT X
\$320.00
PRESENTED & RECORDED
07-03-2007 03:39 PM
AMY R. MURRAY
REGISTER OF DEEDS
BY: DEB SCHAEFER
DEPUTY
BK: RB 709
PG: 2163-2166

Excise Tax: \$320.00 (\$159,589.18) Parcel Identifier No. 8606-90-0988; 8614-16-4410
and 8606-80-7507

Mail after recording to: Brown & Patten, P.A.

370 North Main Street, Suite 206, Waynesville, NC 28786

This instrument was prepared by: Gavin A. Brown, Attorney

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 28th day of June, 2007, by and between

GRANTOR	GRANTEE
LMK REAL ESTATE COMPANY, LLC a North Carolina Limited Liability Company	CHARLES W. MESSER
	Address: <u>63 Bridgett Dr.</u> <u>Waynesville NC 28786</u>

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSES that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land partially situated in Haywood County, North Carolina, more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED
HEREIN BY REFERENCE FOR A COMPLETE
PROPERTY DESCRIPTION

The property hereinabove described was acquired by Grantor by instrument recorded in Deed Book 569 at Page 610, Deed Book 569, Page 607 and Deed Book 652, Page 195, Haywood County Registry.

A map showing the above described property is recorded in Plat Cabinet C at Slot _____, Haywood County Registry.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

LMK Real Estate Company LLC

BY: Michael Kirkpatrick (SEAL)
MICHAEL KIRKPATRICK, MANAGER

SEAL-STAMP NORTH CAROLINA, HAYWOOD COUNTY



I, Melissa S. Singleton, a Notary Public for said county and state, certify that Michael Kirkpatrick, personally came before me this day and acknowledged that he is Manager of LMK Real Estate Company, LLC a North Carolina Limited Liability Company, and that by authority duly given and as the act of the company, executed the foregoing instrument on behalf of the company. Witness my hand and official seal, this the 29th day of June, 2007.

My commission Expires: 4/13/2010

Melissa S. Singleton
Notary Public

The foregoing Certificate(s) of _____

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof

REGISTER OF DEEDS FOR _____
COUNTY. BY _____ Deputy/Assistant-Register of Deeds.

EXHIBIT "A"

TRACT I -- 129 Lansing Road, Waynesville, NC 28786

(Tract IA) THAT TRACT OR PARCEL OF LAND situate in the County of Haywood, State of North Carolina and bounded as follows: BEGINNING on a stake in the center of a small branch; (said stake being 427.00 feet N. 42 deg. W. from the Southerly corner of Miss Augusta Semmes' lot, which corner of said lot is 890.00 feet from the corner of Park Way and Chestnut Park Drive as shown on Map Book "A", page 100, the 890.00 being measured along the margin of said Chestnut Park Drive) and runs due North 286.90 feet to a stake on side of hill; thence due West 222.00 to a stake on top of a small ridge; thence due South 134.90 to a stake near the bottom of the hill; thence S. 69 deg. 30' East 120.00 feet to a stake in the edge of the branch, just below a spring; thence down the branch as it meanders in a Southwesterly direction 150.00 feet to the BEGINNING; containing one (1) acre.

The foregoing described land being a part of what is known as Chestnut Park Drive Addition, situate, lying and being near the corporate limits of the Town of Waynesville.

The party of the first part further conveys a right-of-way of ingress and egress from the road below the property hereinabove described to said property herein conveyed, together with the right to maintain light and telephone poles over and across the lands of the said party of the first part for the purpose of furnishing the residence located on the above described lot with light and telephone system, and with the further right to the use of the spring on the lands of the parties of the first part adjacent to the property herein conveyed, with the right and privileges of conducting the water from said spring to the lot herein described, by means of a pipe line.

BEING the identical property described in deed dated August 14, 2003, from Charles William Messer to LMK Real Estate Company, LLC, in Deed Book 569, Page 610, Haywood County Registry.

(Tract IB) BEING 7.11 acres, more or less, and a portion of the property described in Deed Book 109 at Page 207, Haywood County Registry, and being all of the property owned by the Grantors which is adjacent to the property of the Grantee and lying south of the Grantee's property. This conveyance does not include the 3.32 acres, more or less, known as the "Chestnut Park Domain", or any of the land adjacent to said Chestnut Park Domain owned by the Grantors, as shown on plat entitled "Chestnut Park Addition" recorded in Haywood County Registry.

The land herein is described as parcel number 8608-80-6784 and lies North of the property described in Deed Book 295, Page 508, Haywood County Registry.

TRACT II -- 4 Middleton Drive, Waynesville, NC 28786

BEGINNING at a nail and cap in the pavement in the center line of Camp Branch Road, Ed Walls corner, said point being South 50 deg. 27 min. West 22.79 feet from an iron placed at a locust tree and runs thence with the line of Ed Walls North 50 deg. 27 min. East 652.05 feet to a marked white oak Walls' corner; thence North 51 deg. 36 min. West 181.14 feet to a stake; thence North 59 deg. 40 min. West 87.15 feet to a stake; thence North 36 deg. 14 min. West 23.43 feet to an iron in the fence on top of the ridge; thence South 42 deg. 33 min. West 618.67 feet to a point in the center of the ridge; thence South 42 deg. 33 min. West 618.67 feet to a point in the center of the Camp Branch Road; thence with the center line of the Camp Branch Road South 54 deg. 9 min. East 78 feet and South 43 deg. 9 min. East 122.02 feet to the point of BEGINNING, containing 3.51 acres, more or less. (In the deed to the Grantor, the acreage was shown as 3.42 acres, but this survey indicates it to be slightly more.)

BEING AND INCLUDING the identical property conveyed to H. L. Liner, Sr. et al. by Harry Middleton et ux. by deed dated November 7, 1958, and recorded in Book 176, page 386, Haywood County Registry, and TOGETHER WITH AND INCLUDING the right to connect a water line onto the Middleton pipe line, and the right to lay a water line

from such a connection to the property herein conveyed and together with the right to relocate at the Grantees' expense, that portion of the driveway (Middleton's) which encroaches on the tract herein conveyed, said relocation to be accomplished so that the entrance on the Grantees' (Dantzier's) land.

BEING the identical property conveyed from Larry C. Moss and wife, Joanne M. Moss to LMK Real Estate Company, LLC by deed dated August 14, 2003 and recorded in Deed Book 569, Page 607, Haywood County Registry.

TRACT III -- Garci Road, Waynesville, NC 28786

CONTAINING .496 ACRES and BEING Lot 1, Shingle Cove (Town of Waynesville) as shown on that plat and survey of Arcadis, Geraghty & Miller, recorded in Plat Cabinet C, Slot 2235, Haywood County Registry.

Being a part of that tract described in that deed from Laura Wheeler Skinger to The Town of Waynesville, dated February 28, 1992, recorded in Deed Book 425, page 280, Haywood County Registry.

This conveyance is SUBJECT TO those covenants, restrictions, easements, and reservations as set forth in Deed Book 441, page 553, Haywood County Registry.

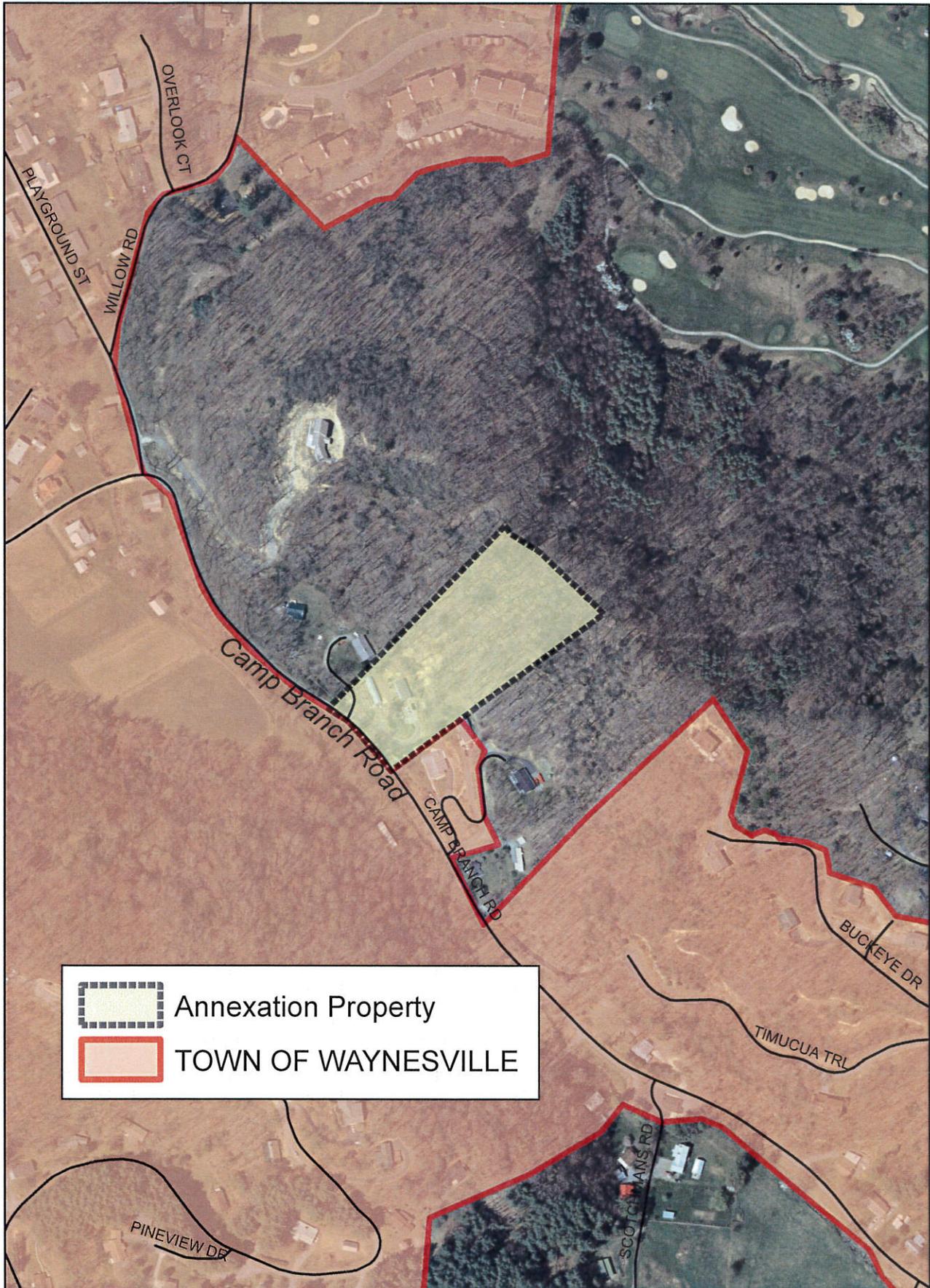
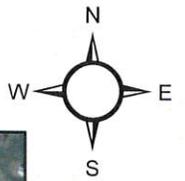
EXCEPTING and RESERVING to the Grantor, its assigns and successors, a right of way and easement for road and utility purposes (including but not limited to sewer, water lines, and electric and power lines and poles) over and across the property described herein, as right of way and easement being described as follows:

BEGINNING at a point located at the southeast corner of Lot 1, Shingle Cove (Plat Cabinet C, Slot 2235) and runs thence with the southern boundary line of said lot S. 82 deg. 44 min. 17 sec. W. 45.05 feet; thence N. 04 deg. 40 min. 55 sec. W. 19.46 feet; thence N. 14 deg. 43 min. 23 sec. W. 98.12 feet to a point in the northern boundary line of said lot; thence with said boundary line of said lot S. 64 deg. 21 min. 46 sec. E. 59.06 feet; thence with the eastern boundary line of said lot two calls as follows: S. 14 deg. 43 min. 23 sec. E. 63.83 feet; and S. 04 deg. 40 min. 55 sec. E. 21.39 feet to the beginning.

BEING the same property conveyed from The Town of Waynesville to LMK Real Estate Co., LLC by deed dated October 2005 and recorded in Deed Book 652, page 195, Haywood County Registry.

Messer Annexation Location Map

#4 & #6 Middleton Drive



	Annexation Property
	TOWN OF WAYNESVILLE



Report For 8614-16-4410

MESSER, CHARLES W

63 BRIDGETT DR

WAYNESVILLE, NC 28786

Account Information:

PIN: 8614-16-4410

Deed: 709/2163

Site Information:

4 MIDDLETON DR

DOUBLE WIDE
MANUFACTURED HOUSING
HOMESITE PRIMARY, HOMESITE RESIDUAL

Heated Area: 960
Year Built: 1980
Total Acreage: 3.5152
Township: WAYNESVILLE

Site Value Information:

Land Value: \$47,200
Building Value: \$30,500
Market Value: \$77,700
Deferred Value: (\$0)
Assessed Value: \$77,700
Sale Price: \$159,589
Sale Date: 7/3/2007
Taxes 2012: \$559.21
Taxes 2011: \$559.21



1: 1217

Disclaimer: The maps on this site are not surveys. They are prepared from the inventory of real property found within this jurisdiction and are compiled from recorded deeds, plats and other public records and data. Users of this site are hereby notified that the aforementioned public primary information sources should be consulted for verification of any information contained on these maps. Haywood county and the website provider assume no legal responsibility for the information contained on these maps.

TOWN OF WAYNESVILLE CODE OF ORDINANCES

Sec. 58-277. Requests for connections to, extension of sewer lines outside town limits.

- (a)

All requests for connection to or extensions of sewer lines from the present sewer system of the town outside the corporate limits of the town shall be writing and shall be addressed to the board of alderman.
- (b)

A written petition for voluntary annexation which meets the requirements of G.S. ch. 160A art. 4A for the particular piece of property in question shall accompany all written requests for connections to or extensions of sewer lines outside the corporate limits of the town. The petition shall be addressed to the board of aldermen and shall comply in all respects with the then-existing annexation laws of the state.
- (c)

The board of aldermen shall have 180 days from the date of submission of the voluntary petition for annexation to the board of aldermen within which to commence the annexation process.
- (d)

The board of aldermen may accept or reject a written request for extension of sewer lines outside the corporate limits of the town without regard to whether or not it accepts the property in question for annexation; however, if the board of aldermen rejects the written request for connection to or extension of the town sewer lines outside the corporate limits of the town, the board of aldermen shall also automatically reject the petition for annexation.

(Ord. No. 13-07, § 11.2, 5-10-2007)

NC GENERAL STATUTES

Article 4A.

Extension of Corporate Limits.

Part 1. Extension by Petition.

§§ 160A-24 through 160A-28: Repealed by Session Laws 1983, c. 636, s. 26.

§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.

Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this Article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of State. The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census. (1947, c. 725, s. 6; 1973, c. 426, s. 74; 1987, c. 715, s. 6, c. 879, s. 3; 1989, c. 440, s. 7; 1991, c. 586, s. 1.)

§ 160A-30. Surveys of proposed new areas.

The governing bodies of the cities and towns after five days' written notice to the owner of record or persons in possession of the premises are hereby authorized to enter upon any lands to make surveys or examinations as may be necessary in carrying out the mapping requirements of proposed annexations under any provision of Article 4A of Chapter 160A; provided, the city or town authorizing such entry shall make reimbursement for any damage resulting from such activity. (1947, c. 725, s. 7; 1973, c. 426, s. 74; 1975, c. 312.)

§ 160A-31. Annexation by petition.

(a) The governing board of any municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located within such area. The petition shall be signed by each owner of real property in the area and shall contain the address of each such owner.

(b) The petition shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____
2. The area to be annexed is contiguous to the (City or Town) of _____ and the boundaries of such territory are as follows:

(b1) Notwithstanding the provisions of subsections (a) and (b) of this section, if fifty-one percent (51%) of the households in an area petitioning for annexation pursuant to this section have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds, the governing board of any municipality shall annex by ordinance any area the population of which is no more than ten percent (10%) of that of the municipality and one-eighth of the aggregate external boundaries of which are contiguous to its boundaries, upon presentation to the

governing board of a petition signed by the owners of at least seventy-five percent (75%) of the parcels of real property in that area. A municipality shall not be required to adopt more than one ordinance under this subsection within a 36-month period.

(b2) The petition under subsection (b1) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned owners of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(b1) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.
2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(c) Upon receipt of the petition, the municipal governing board shall cause the clerk of the municipality to investigate the sufficiency thereof and to certify the result of the investigation. For petitions received under subsection (b1) or (j) of this section, the clerk shall receive the evidence provided under subsection (l) of this section before certifying the sufficiency of the petition. Upon receipt of the certification, the municipal governing board shall fix a date for a public hearing on the question of annexation, and shall cause notice of the public hearing to be published once in a newspaper having general circulation in the municipality at least 10 days prior to the date of the public hearing; provided, if there be no such paper, the governing board shall have notices posted in three or more public places within the area to be annexed and three or more public places within the municipality.

(d) At the public hearing persons resident or owning property in the area described in the petition and persons resident or owning property in the municipality shall be given an opportunity to be heard. The governing board shall then determine whether the petition meets the requirements of this section. Upon a finding that the petition that was not submitted under subsection (b1) or (j) of this section meets the requirements of this section, the governing board shall have authority to pass an ordinance annexing the territory described in the petition. The governing board shall have authority to make the annexing ordinance effective immediately or on the June 30 after the date of the passage of the ordinance or the June 30 of the following year after the date of passage of the ordinance.

(d1) Upon a finding that a petition submitted under subsection (j) of this section meets the requirements of this section, the governing body shall have the authority to adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(d2) Upon a finding that a petition submitted under subsection (b1) of this section meets the requirements of this section, the governing body shall, within 60 days of the finding, estimate the capital cost to the municipality of extending water and sewer lines to all parcels within the area covered by the petition and estimate the annual debt service payment that would be required if those costs were financed by a 20-year revenue bond. If the estimated annual debt service payment is less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance. If the estimated annual debt service payment is greater than or equal to five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body may adopt a resolution declining to annex the area. If such a resolution is adopted, the governing body shall immediately submit a request to the Local Government Commission to certify that its estimate of the annual debt service payment is reasonable based on established governmental accounting principles.

- (1) If the Local Government Commission certifies the estimate, the municipality is not required to annex the area and no petition to annex the area may be submitted under subsection (b1) of this section for 36 months following the certification. During the 36-month period, the municipality shall make ongoing, annual good faith efforts to secure Community Development Block Grants or other grant funding for extending water and sewer service to all parcels in the areas covered by the petition. If sufficient funding is secured so that the estimated capital cost to the municipality for extending water and sewer service, less the funds secured, would result in an annual debt service payment cost to the municipality of less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.
- (2) If the Local Government Commission notifies the governing board that the estimates are not reasonable based on established governmental accounting principles and that a reasonable estimate of the annual debt service payment is less than five percent (5%) of the municipality's annual water and sewer systems revenue for the most recent fiscal year, then the governing body shall within 30 days of the notification adopt an annexation ordinance for the area with an effective date no later than 24 months after the adoption of the ordinance.

(d3) Municipal services shall be provided to an area annexed under subsections (b1) and (j) of this section in accordance with the requirements of Part 7 of this Article.

(e) From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. Real and personal property in the newly annexed territory on the January 1 immediately preceding the beginning of the fiscal year in which the annexation becomes effective is subject to municipal taxes as provided in G.S. 160A-58.10. If the effective date of annexation falls between June 1 and June 30, and the effective date of the privilege license tax ordinance of the annexing municipality is June 1, then businesses in the area to be annexed shall be liable for taxes imposed in such ordinance from and after the effective date of annexation.

(f) For purposes of this section, an area shall be deemed "contiguous" if, at the time the petition is submitted, such area either abuts directly on the municipal boundary or is separated from the municipal boundary by the width of a street or street right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, lands owned by the municipality or some other political subdivision, or lands owned by the State of North Carolina. A connecting corridor consisting solely of a street or street right-of-way may not be used to establish contiguity. In describing the area to be annexed in the annexation ordinance, the municipal governing board may include within the description any territory described in this subsection which separates the municipal boundary from the area petitioning for annexation.

(g) The governing board may initiate annexation of contiguous property owned by the municipality by adopting a resolution stating its intent to annex the property, in lieu of filing a petition. The resolution shall contain an adequate description of the property, state that the property is contiguous to the municipal boundaries and fix a date for a public hearing on the question of annexation. Notice of the public hearing shall be published as provided in subsection (c) of this section. The governing board may hold the public hearing and adopt the annexation ordinance as provided in subsection (d) of this section.

(h) A city council which receives a petition for annexation under this section may by ordinance require that the petitioners file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160A-385.1 or G.S. 153A-344.1 shall be binding on the landowner and any such vested right shall be terminated.

(i) A municipality has no authority to adopt a resolution or petition itself under this Part for annexation of property it does not own or have any legal interest in. For the purpose of this subsection, a municipality has no legal interest in a State-maintained street unless it owns the underlying fee and not just an easement.

(j) Using the procedures under this section, the governing board of any municipality may annex by ordinance any distressed area contiguous to its boundaries upon presentation to the governing board of a petition signed by at least one adult resident of at least two-thirds of the resident households located within such area. For purposes of this subsection, a "distressed area" is defined as an area in which at least fifty-one percent (51%) of the households in the area petitioning to be annexed have incomes that are two hundred percent (200%) or less than the most recently published United States Census Bureau poverty thresholds. The municipality may require reasonable proof that the petitioner in fact resides at the address indicated.

(k) The petition under subsection (j) of this section shall be prepared in substantially the following form:

DATE:

To the _____ (name of governing board) of the (City or Town) of _____

1. We the undersigned residents of real property believe that the area described in paragraph 2 below meets the requirements of G.S. 160A-31(j) and respectfully request that the area described in paragraph 2 below be annexed to the (City or Town) of _____.
2. The area to be annexed is contiguous to the (City or Town) of _____, and the boundaries of such territory are as follows:

(l) For purposes of determining whether the percentage of households in the area petitioning for annexation meets the poverty thresholds under subsections (b1) and (j) of this section, the petitioners shall submit to the municipal governing board any reasonable evidence that demonstrates the area in fact meets the income requirements of that subsection. The evidence presented may include data from the most recent federal decennial census, other official census documents, signed affidavits by at least one adult resident of the household attesting to the household size and income level, or any other documentation verifying the incomes for a majority of the households within the petitioning area. Petitioners may select to submit name, address, and social security number to the clerk, who shall in turn submit the information to the Department of Revenue. Such information shall be kept confidential and is not a public record. The Department shall provide the municipality with a summary report of income for households in the petitioning area. Information for the report shall be gleaned from income tax returns, but the report submitted to the municipality shall not identify individuals or households. (1947, c. 725, s. 8; 1959, c. 713; 1973, c. 426, s. 74; 1975, c. 576, s. 2; 1977, c. 517, s. 4; 1987, c. 562, s. 1; 1989 (Reg. Sess., 1990), c. 996, s. 3; 2011-57, s. 3; 2011-396, s. 10.)

§ 160A-31.1. Assumption of debt.

(a) If the city has annexed under this Part any area which is served by a rural fire department and which is in:

- (1) An insurance district defined under G.S. 153A-233;

(2) A rural fire protection district under Article 3A of Chapter 69 of the General Statutes;
or

(3) A fire service district under Article 16 of Chapter 153A of the General Statutes,
then beginning with the effective date of annexation the city shall pay annually a proportionate share of any payments due on any debt (including principal and interest) relating to facilities or equipment of the rural fire department, if the debt was existing at the time of submission of the petition for annexation to the city under this Part. The rural fire department shall make available to the city not later than 30 days following a written request from the city, information concerning such debt. The rural fire department forfeits its rights under this section if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) The annual payments from the city to the rural fire department on such shared debt service shall be calculated as follows:

(1) The rural fire department shall certify to the city each year the amount that will be expended for debt service subject to be shared by the city as provided by subsection (a) of this section; and

(2) The amount determined under subdivision (1) of this subsection shall be multiplied by the percentage determined by dividing the assessed valuation of the area of the district annexed by the assessed valuation of the entire district, each such valuation to be fixed as of the date the annexation ordinance becomes effective.

(c) This section does not apply in any year as to any annexed area(s) for which the payment calculated under this section as to all annexation ordinances adopted under this Part by a city during a particular calendar year does not exceed one hundred dollars (\$100.00).

(d) The city and rural fire department shall jointly present a payment schedule to the Local Government Commission for approval and no payment may be made until such schedule is approved. The Local Government Commission shall approve a payment schedule agreed upon between the city and the rural fire department in cases where the assessed valuation of the district may not readily be determined, if there is a reasonable basis for the agreement. (1989, c. 598, s. 2.)

§ 160A-32. Repealed by Session Laws 1983, c. 636, s. 26.1, effective June 29, 1983.

NOTICE OF PUBLIC HEARING REQUEST FOR ANNEXATION

TAKE NOTICE, that the Town of Waynesville Board of Aldermen will hold a public hearing at its regular meeting on May 27, 2014 at 7:00 PM, or as soon after as possible, in the Board Room of Town Hall at 9 South Main Street, Waynesville, NC to consider a petition for annexation submitted by Charles William Messer on the following described territory pursuant to NC General Statute 160A-31.0 – 31.1 and Town of Waynesville Code of Ordinances section 58-277.

3.5152 Acres located at #4 and #6 Middleton Drive (PIN# 8614-16-4410)

Persons wishing to be heard at the public hearing are asked to be present.

This the 5th Day of May, 2014.

s/ Amie Owens
Town of Waynesville

By: Amie Owens, Town Clerk

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: May 27, 2014**

SUBJECT: Public hearing to consider amending the Code of Ordinances/Land Development Standards, (Sections 15.2, 15.3, 15.5, 15.13), regarding Quasi-Judicial Hearing Procedures

AGENDA INFORMATION:

Agenda Location: Public Hearing/Ordinance Amendment
Item Number: 4B
Department: Development Services
Contact: Marcy Onieal, Town Manager
Presenter: Marcy Onieal, Town Manager

BRIEF SUMMARY:

In 2013 the North Carolina General Assembly adopted Session Law 2013-126 which modernizes the quasi-judicial hearing statute. The new legislation does not drastically alter the fundamental aspects of the prior law, but it does make several important changes. The bill was proposed by the NC Bar Association and is regarded by the NC School of Government as an improvement to prior law.

The proposed amendment to the Town LDS brings that code into compliance with the current State statutes.

At their regular meeting on April 21, 2014 the Planning Board voted unanimously to recommend approval of this amendment.

MOTION FOR CONSIDERATION: *To approve amendments to the Code of Ordinances of the Town of Waynesville (Sections 15.2 – 15.13), regarding the quasi-judicial hearing process for Tuesday, May 27, 2014 at 7:00 pm, or as soon thereafter as possible, in the Board Room of Town Hall, 9 South Main Street.*

FUNDING SOURCE/IMPACT: N/A

ATTACHMENTS:

- Staff Report to Planning Board
- Markup of Town Code (Sections 15.2 – 15.13 reflecting proposed amendments)
- 4/21/14 Planning Board Minutes
- NCGS Session Law 2013-126
- School of Government Planning & Zoning Law Bulletin #22, Oct 2013

MANAGER'S COMMENTS AND RECOMMENDATIONS: To open/close public hearing and approve amendments as presented.

Planning Board Staff Report

Subject: LDS text amendment – update Quasi-Judicial Procedures
Sections: 15.2, 15.3, 15.5, 15.12, 15.13
Applicant: Staff initiated
Meeting Date: April 21, 2014

Background:

In the 2003 session the North Carolina General Assembly adopted Session Law 2013-126 modifying the NC General Statutes regarding quasi-judicial proceedings handled by local governments. The changes were adopted in response to a request by the NC Bar Association and are regarded by experts in municipal law with the NC School of Government to be an improvement over the former statutes.

Town staff has attended briefing sessions on these changes held by the School of Government and has prepared a revision to the Town's Land Development Standards to implement these changes. The changes apply primarily to Appeals of Administrative Decisions and Variance Requests handled by the Zoning Board of Adjustment. All changes may be categorized as being made to keep Town Code in compliance with state enabling legislation:

1. Changes public notice of Variance and Appeal requests to remove published notice and add mailed notice to affected and adjacent property owners.
2. Enables the Clerk to the Board as well as the Chair to swear in witnesses.
3. Clarifies the requirements for written notice of decision and the delivery of that notice.
4. Adds provisions for an expedited hearing process in cases where enforcement actions are not stayed until the hearing is held.
5. Eliminates the super-majority (4/5ths) vote required to uphold an appeal of an administrative decision.
6. Requires that the Administrator appear as a witness in cases of appeal of an administrative decision.
7. Eliminates the "practical difficulties" language from considering the granting of a variance.
8. Eliminates the test that a variance may not be properly granted if the applicant can make reasonable use of the property without the variance.

Staff Recommendation:

Staff recommends that the requested amendments be approved.

15 Administration

15.2.3 Permit/Process Type

Permit/ Process Type	Section	Permit/ Process Type	Reviewing Agency	Public Notification (15.3)	Approving Agency	Appeal Process	Permit Period	Permit Extension
Certificate of LDS Compliance	15.6.1	Administrative	Admin	None	Admin	BOA	6 months	6 months
Temporary Use Permit	15.6.2	Administrative	Admin	None	Admin	BOA	See 4.7	n/a
Certificate of Occupancy	15.6.3	Administrative	Admin	None	Admin	BOA	n/a	n/a
Modification of Dimensional Standards	15.6.4	Administrative	Admin	None	Admin	BOA	n/a	n/a
Grading Permit	15.7.1	Administrative	Admin	None	Admin	BOA	6 months	Re-submit
Floodplain Development Permit	15.7.2	Administrative	Admin	None	Admin	BOA	1 year	Re-submit
Stormwater Permit	15.7.3	Administrative	Admin	None	Admin	BOA	1 year	Re-submit
Site Plan/Design Review (Minor)	15.8.1	Administrative	Admin	None	Admin	BOA	1 year	1 year
Site Plan/Design Review (Major)	15.8.2	Quasi-Judicial	Admin	1, 2, 4	Planning Board	Superior Court	1 year	1 year
Subdivision (Minor)	15.9.1	Administrative	Admin	None	Admin	BOA	30 days to file Plat	Re-submit
Subdivision (Major)	15.9.2	Quasi-Judicial	Admin	1, 2, 4	Planning Board	BOA	1 year to Final Plat	6 months
Subdivision (Major) – Preliminary Plat	15.9.3	Administrative	Admin	None	Admin	BOA	1 year to Final Plat	6 months
Subdivision (Major) – Final Plat	15.9.4	Administrative	Admin	None	Admin	BOA	30 days to file Plat	Re-submit
Special Use Permit	15.10	Quasi-Judicial	Planning Board	1, 2, 5	Planning Board	Superior Court	1 Year	1 Year
Designation of Historic Landmarks/Districts	15.11.1	Legislative	HPC	1, 2, 3	Board of Aldermen	Superior Court	n/a	n/a
Certificate of Appropriateness (Minor)	15.11.2	Administrative	Admin	None	Admin	HPC	6 months	Re-submit
Certificate of Appropriateness (Major)	15.11.3	Quasi-Judicial	Admin	1, 2, 4	HPC	BOA	6 months	Re-submit
Appeal of Administrative Decision	15.12	Quasi-Judicial	BOA	1, 2, 4	BOA	Superior Court	30 days to Appeal	n/a
Variance	15.13	Quasi-Judicial	BOA	1, 2, 4	BOA	Superior Court	30 days to Appeal	n/a
Text Amendment	15.14	Legislative	Planning Board	1, 2, 3, 4	Board of Aldermen	Superior Court	n/a	n/a
Map Amendment (Rezoning)	15.14	Legislative	Planning Board	1, 2, 3, 4	Board of Aldermen	Superior Court	n/a	n/a
Conditional District	15.15	Legislative	Planning Board	1, 2, 5	Board of Aldermen	Superior Court	May be rescinded after 2 years	n/a
Vested Right	15.16	Legislative	Planning Board	1, 2, 4	Board of Aldermen	None	2-5 years	Up to 5 years total

Admin – Administrator (14.1) | Board of Aldermen (14.2) | BOA – Board of Adjustment (14.4) | HPC – Historic Preservation Commission (14.5) | Superior Court of North Carolina

15.3.3 Level 3 – Notification to Affected Property Owners

The applicant and The owners of all property affected by a pending action (e.g., new overlay district) shall be notified of the hearing/meeting by first class mail. Such notification shall be **deposited in the mail postmarked** at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information. Except for a town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the city council that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The applicant shall certify to the Board of Aldermen that proper notice has been provided in fact, and such certificate shall be deemed conclusive in the absence of fraud. (For Third Party Rezoning: If notice cannot with due diligence be achieved by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to 26 U.S.C. §7502(f)(2), notice may be given by publication consistent with G.S. 1A-1, Rule 4(j1). This applies only to an application to request a zoning map amendment where the application is not made by the owner of the parcel of land to which the amendment would apply.)

15.3.4 Level 4 – Notification to Adjacent Property Owners

The applicant and The owners of property within one hundred (100) feet on all sides of the subject property (not including street rights-of-way that are less than 100 feet in width) shall be notified of the hearing/meeting by first class mail. Such notification shall be **deposited in the mail postmarked** at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. ~~In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information.~~

15.3.5 Level 5 – Notification to Property Owners in Close Proximity

The applicant and The owners of property within five hundred (500) feet on all sides of the subject property shall be notified of the hearing/meeting by first class mail. Such notification shall be **deposited in the mail postmarked** at least 10 but not more than 25 days prior to the date to the meeting at which the matter is to be heard. ~~In addition, a sign shall be prominently posted on the subject property(ies) or on an adjacent public street or highway right-of-way with a notice of the pending action and a phone number and email address to contact for additional information.~~

15.5.1 Standards for Conduct of Quasi-judicial Hearings

- A. **Contact with Decision-Making Board Members:** Contact with any members of a decision-making board prior to the public hearing by any individual regarding the matter is prohibited.
- B. **All Participants to be Sworn In:** All participants in the public hearing shall be duly sworn in prior to the submission of any testimony **by the Chair or Clerk to the Board/Commission.**
- C. **Competent Evidence Required:** All decisions shall be based on competent evidence entered in as part of the record. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
 1. The use of property in a particular way would affect the value of other property.
 2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
 3. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- D. **Cross-Examination Permitted:** The cross-examination of witnesses submitting testimony shall be permitted upon request.

15.5.3 Record of Decision

- A. The following shall become part of the official record of decision:
 - Documents and exhibits submitted to the decision-making board
 - Meeting minutes
- B. **Transcript of Audio/Video of Meetings:** Any party may request, at their expense, a transcript of the proceedings from any recorded audio/video.
- C. **The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based on competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision become effective.**

The Administrator shall certify that proper notice has been made.

15.12 Appeals of Administrative Decisions

15.12.1 Applicability

This process is hereby established to provide an appeal process for parties aggrieved by any order, requirement, decision or determination, made by an administrative officer charged with enforcing the provisions of this ordinance.

15.12.2 Filing Procedures

- A. **Process Types:** Quasi-Judicial (See also 15.4)
- B. **Filing Procedure:** An appeal of an administrative decision may be taken by any person aggrieved (or by their authorized agent) or may be taken by any officer, department, board or bureau of the town. Such an appeal shall be made to the ~~town~~ **Town Clerk** within thirty (30) days of the receipt of the written notice of decision from the town.
- C. **Stay of Proceedings:** The filing of an appeal shall stay all proceedings in furtherance of the contested action unless the Administrator certifies that, in his/her opinion, by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such a case, proceedings shall not be stayed except by restraining order granted by the Superior Court of Haywood County on notice to the administrative official from whom the appeal is taken with due cause shown. **If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situation the appellant may request and the board may grant a stay of a final decision of the permit applications or building permits affected by the issue being appealed.**
- D. **Required Application Information:** All information relevant to describing the applicant's appeal to the Board of Adjustment. The Administrator shall similarly prepare a report detailing the regulations and interpretation behind the matter being appealed and their reason for their decision. **The Administrator shall provide a copy of this information to the appellant and to the owner of the property that is the subject of the appeal.**
- E. **Public Notification:** Level 1 & 2 4

15.12.3 Formal Review

- A. Upon receiving the application, the Board shall conduct a public hearing on the appeal. Any party may appear in person or be represented by an agent at the hearing.

- B. After conducting the public hearing, the Board shall adopt an order reversing or affirming, wholly or in part, or modifying the order requirements, decision or determination in question. ~~It shall take a 4/5ths vote of the Board to reverse or modify the contested action.~~
- C. The Board, in making its ruling, shall have all the powers of the Administrator from whom the appeal is taken, and may issue or direct the issuance of a permit.
- D. The decision of the Board must be in writing and permanently filed in the minutes of that reviewing body as a public record. All findings of fact and conclusions of law must be separately stated in final decisions or orders of the board, which must be delivered to parties of interest by certified mail.
- E. **The Administrator making the decision being appealed shall be present at the hearing as a witness.**
- F. **If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.**

15.13 Variances

15.13.2 Filing Procedures

- A. **Process Types:** Quasi-Judicial (See also 15.4)
- B. **Pre-Application Procedure:** Every applicant for a variance is strongly encouraged to meet with the planning department in a pre-application conference prior to the submittal of a request for a variance. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
- C. **Filing Procedure:** An application for a variance may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application.
- D. **Required Application Information:** All information relevant to describing the applicant's request to the Board of Adjustment.
- E. **Public Notification:** Level 1, 2 & 4
- F. **Determination of Completeness:** Staff shall review an application for a variance to determine if it is complete. If an application is complete, the Administrator shall schedule the matter for consideration at a meeting of the board of adjustment. The Administrator shall prepare a staff report regarding the submitted variance application.

15.13.3 Formal Review

- A. **Action by the Board of Adjustment**
 - 1. Upon receipt of the request for a variance from the Administrator, the board of adjustment shall hold a quasi-judicial hearing on the request.
 - 2. After conducting the hearing, the Board of Adjustment may: deny the application; conduct an additional public hearing on the application; or grant the application.

3. A decision by the Board of Adjustment shall be made within thirty-two (32) days of the date of the hearing.
4. Any approval or denial of the request shall be accompanied by written findings that the variance meets or does not meet each of the standards set forth in Section 15.13.3.B.1 below. Standards for floodplain development regulation variances are set forth in Section 15.13.3.B.2.
5. Any applicant to whom a variance from the floodplain development regulations is granted shall be given written notice. This notice shall specify the difference between the base flood elevation and the elevation to which the structure is to be built and contain a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions. Variance records shall be provided to the Federal Emergency Management Agency upon request.

B. Standard of Review

1. **General Variance Requests:** The Board of Adjustment shall not grant a variance unless and until it makes all of the following findings:
 - a. That there are ~~practical difficulties or~~ unnecessary hardships in the way of carrying out the strict letter of this chapter.
 - ~~b. That if the applicant complies with the provisions of the chapter, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property.~~
 - c. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings located in the same land development district.
 - d. That the special conditions and circumstances do not result from the actions of the applicant. ~~The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.~~**
 - e. That the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.
 - f. That the variance is the minimum necessary to afford relief.
 - g. That the public safety and welfare have been assured and substantial justice has been done.

MINUTES OF THE TOWN OF WAYNESVILLE PLANNING BOARD
REGULAR MEETING
Town Hall – 9 South Main St., Waynesville, NC 28786
April 21, 2014

THE WAYNESVILLE PLANNING BOARD held a regular meeting on Monday April 21, 2014 at 5:30 p.m. in the board room of the Town Hall, 9 South Main Street, Waynesville, NC.

A. CALL TO ORDER

1. Welcome/Calendar/Announcements

Chairman Patrick McDowell welcomed everyone and called the meeting to order at 5:30 p.m. with the following members present:

Marty Prevost
Jon Feichter
Brooks Hale
Patrick McDowell
Shell Isenberg
Don Stephenson
Danny Wingate

The following staff members were present:

Paul Benson, Planning Director
Eddie Ward, Deputy Town Clerk
Jason Rogers, Codes Administrator

2. Minutes of March 17, 2014

Board Member Marty Prevost made a motion, seconded by Board Member Brooks Hale, to approve the minutes of March 17, 2014 as presented. The motion passed unanimously.

B. NEW BUSINESS

3. Public Hearing: Consideration of text amendment to Section 14.5.2A, Historic Preservation Commission Membership and Quorum, of the Town of Waynesville Land Development Standards

Chairman Patrick McDowell asked Planning Director Paul Benson to explain the Land Development Standards text amendments. Mr. Benson said the Historic Preservation Commission had recently voted to recommend the membership of the Commission be increased by two members for a total of nine members. Commission members believe this change will bring more vitality to the Commission.

Mr. Benson stated that in 2011 the membership of the Commission was reduced from nine members to seven members because of difficulty filling all positions with interested persons. Since that time the Commission has become more stable and the current members would like to increase the membership to nine persons again. There has been some interest in the positions from people in the community, so the Commission feels it would not be a problem to fill two more positions.

Requirements for membership on the Historic Preservation Commission include residing within the corporate limits and extra-territorial jurisdiction of the Town of Waynesville, and demonstrating special interest, experience, or education in history, architecture, archaeology, or related field.

Recommendation of the staff is that the requested amendment be approved.

A motion was made by Board Member Jon Feichter, seconded by Board Member Don Stephenson, to approve the text amendment to Section 14.5.2A, Historic Preservation Commission Membership and Quorum, of the Town of Waynesville Land Development Standards. The motion passed unanimously.

4. Public Hearing: Consideration of a text amendment to Chapter 15, Administration of the Town of Waynesville Land Development Standards

Mr. Benson stated that in the 2013 session the North Carolina General Assembly adopted Session Law 2013-126 modifying the NC General Statutes regarding quasi-judicial proceeding handled by local governments. These changes were adopted in response to a request by the NC Bar Association and are regarded by planning law experts with the NC School of Government to be an improvement over the former statutes.

The changes apply primarily to Appeals of Administrative Decisions and Variance Requests handled by the Zoning Board of Adjustment. All are made to keep Town Code in compliance with state enabling legislation. They include:

- Changes in public notice of Variance and Appeal requests to remove published notice and add mailed notice to affected and adjacent property owners.
- Enables the Clerk to the Board as well as the Chair to swear in witnesses.
- Clarifies the requirements for written notice of decision and the delivery of that notice.
- Adds provisions for an expedited hearing process in cases where enforcement actions are not stayed until the hearing is held.
- Eliminates the super-majority (4/5th) vote required to uphold an appeal of an administrative decision.
- Requires that the Administrator appear as a witness in cases of appeal of an administrative decision.
- Eliminates the “practical difficulties” language from considering the granting of a variance
- Eliminates the test that a variance may not be properly granted if the applicant can make reasonable use of the property without the variance.

Recommendation of the staff is that the requested amendment be approved.

A motion was made by Board Member Marty Prevost, seconded by Board Member Brooks Hale, to approve the text amendment to Chapter 15 Administration of the Town of Waynesville Land Development Standards. The motion passed unanimously.

Town Manager Marcy Onieal came into the meeting at 5:45 p.m. Manager Onieal asked the Board for discussion and their thoughts of the direction of the Planning Board and the process of hiring a replacement for Planning Director Paul Benson upon his retirement in May. There were no comments from the Board.

Chairman McDowell thanked Mr. Benson for all his work, and stated that he had been a great asset to the Town of Waynesville during his years as Planning Director.

C. ADJOURN

With no further business, it was the consensus of the Board to adjourn the meeting at 5:53 p.m. All were in favor.

Patrick McDowell, Chairman

Eddie Ward, Deputy Town Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2013-126
HOUSE BILL 276

AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS
OF ADJUSTMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-388 reads as rewritten:

"§ 160A-388. Board of adjustment.

(a) Composition and Duties. – The city council zoning or unified development ordinance may provide for the appointment and compensation of a board of adjustment consisting of five or more members, each to be appointed for three years. In appointing the original members of such board, members or in the filling of vacancies caused by the expiration of the terms of existing members, the city council may appoint certain members for less than three years to the end so that thereafter the terms of all members shall not expire at the same time. The council may, in its discretion, may appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and member serving on behalf of any regular member, shall have and may exercise member has all the powers and duties of a regular member. A city The ordinance may designate a planning board or governing board to perform any or all of the duties of a board of adjustment in addition to its other duties. duties and may create and designate specialized boards to hear technical appeals.

(a1) Provisions of Ordinance. – The zoning or unified development ordinance may provide that the board of adjustment hear and decide special and conditional use permits, requests for variances, and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board of adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

(a2) Notice of Hearing. – Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

(b) A zoning ordinance or those provisions of a unified development ordinance adopted pursuant to the authority granted in this Part shall provide that the board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of that ordinance. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the board of adjustment by general rule,



~~by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the board of adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board of adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The board of adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.~~

(b1) Appeals. – The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning or unified development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

- (1) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.
- (2) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (3) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.
- (4) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.
- (5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (6) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall

meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

- (7) Subject to the provisions of subdivision (6) of this subsection, the board of adjustment shall hear and decide the appeal within a reasonable time.
- (8) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.
- (9) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).
- (10) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.

(c) Special and Conditional Use Permits. – The zoning ordinance may provide that the board of adjustment may permit special exceptions to the zoning regulations in specified classes of cases or situations as provided in subsection (d) of this section, not including variances in permitted uses, and that the board may use hear and decide special and conditional use permits, all to be permits in accordance with the principles, conditions, safeguards, standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits. The ordinance may also authorize the board to interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of the ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any zoning ordinance.

(d) Variances. – When practical difficulties or unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any of the regulations or provisions of the ordinance so that provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit spirit, purpose, and intent of the ordinance shall be observed, ordinance, such that public safety and welfare secured, safety is secured, and substantial justice done. is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(e) Voting. –

(1) The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of an ordinance adopted pursuant to this Part, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance, or to grant a variance from the provisions of the ordinance. grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" members of the board for calculation of the requisite supermajority majority if there are no qualified alternates available to take the place of such members.

(e1) A member of the board or any other body exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(e2) Quasi-Judicial Decisions and Judicial Review. –

(1) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(2) Every quasi-judicial decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari. Any certiorari pursuant to G.S. 160A-393. A petition for review by the superior court shall be filed with the clerk of superior court within by the later of 30 days after the decision of the board is filed in such office as the ordinance specifies, is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(f) Oaths. – The chairman chair of the board of adjustment or any member temporarily acting as chairman, chair and the clerk to the board are is authorized in his official capacity to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) Subpoenas. – The board of adjustment adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d)

may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its order subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor."

SECTION 2.(a) G.S. 160A-388(e1) is recodified as G.S. 160A-388(e)(2).

SECTION 2.(b) G.S. 160A-388(e)(2), as recodified by Section 2(a) of this act, reads as rewritten:

"(2) A member of ~~the any board or any other body~~ exercising quasi-judicial functions pursuant to this Article shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible ~~conflicts~~ violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection."

SECTION 3.(a) G.S. 153A-345 is repealed except that any local modification to that section in effect on September 30, 2013, shall be treated as a local modification to G.S. 160A-388 from October 1, 2013, through June 30, 2015.

SECTION 3.(b) Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-345.1. Board of adjustment.

(a) The provisions of G.S. 160A-388 are applicable to counties.

(b) For the purposes of this section, as used in G.S. 160A-388, the term "city council" is deemed to refer to the board of county commissioners, and the terms "city" or "municipality" are deemed to refer to the county.

(c) If a board of county commissioners does not zone the entire territorial jurisdiction of the county, each designated zoning area shall, if practicable, have at least one resident as a member of the board of adjustment; otherwise, the provisions of G.S. 153A-25 regarding qualifications for appointive office shall apply to board of adjustment appointments."

SECTION 4. G.S. 160A-381(c) reads as rewritten:

"(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities."

SECTION 5. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. Notice of hearings on special or conditional use permit applications shall be as provided in G.S. 160A-388(a2). No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with G.S. 153A-345."

SECTION 6. G.S. 153A-44 reads as rewritten:

"§ 153A-44. Members excused from voting.

The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 153A-340(g), or ~~153A-345(e1)-160A-388(e)(2).~~ For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct."

SECTION 7. G.S. 153A-336(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a board of commissioners or a planning board, other than a planning board comprised solely of members of a county planning staff, and the ordinance authorizes the board of commissioners or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the board of commissioners or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 153A-340(f), ~~153A-345(e2)-160A-388(e2)(2),~~ and 153A-349 shall apply to those appeals."

SECTION 8. G.S. 153A-340(c1) reads as rewritten:

"(c1) The regulations may also provide that the board of adjustment, the planning board, or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When deciding special use permits or conditional use permits, the board of county commissioners or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the board of county commissioners or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the board of county commissioners or planning board shall be subject to review of the superior court in the nature of certiorari consistent with ~~G.S. 153A-345.~~ G.S. 160A-388."

SECTION 9. G.S. 153A-349(c) is repealed.

SECTION 10. G.S. 153A-349.8(c) reads as rewritten:

"(c) If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by ~~G.S. 153A-345(b).~~ G.S. 160A-388(b1)."

SECTION 11. G.S. 160A-75 reads as rewritten:

"§ 160A-75. Voting.

No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, 160A-381(d), or ~~160A-388(e1)-160A-388(e)(2).~~ In all other cases, a failure to vote by a member who is physically present in the council chamber,

or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council."

SECTION 12. G.S. 160A-377(a) reads as rewritten:

"(a) When a subdivision ordinance adopted under this Part provides that the decision whether to approve or deny a preliminary or final subdivision plat is to be made by a city council or a planning board, other than a planning board comprised solely of members of a city planning staff, and the ordinance authorizes the council or planning board to make a quasi-judicial decision in deciding whether to approve the subdivision plat, then that quasi-judicial decision of the council or planning board shall be subject to review by the superior court by proceedings in the nature of certiorari. The provisions of G.S. 160A-381(c), ~~160A-388(e2)~~, ~~160A-388(e2)(2)~~, and 160A-393 shall apply to those appeals."

SECTION 13. G.S. 160A-393(c)(3) reads as rewritten:

"(3) Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of impermissible conflict as described in ~~G.S. 160A-388(e1)~~, ~~G.S. 160A-388(e)(2)~~, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 14. G.S. 160A-393(j)(2) reads as rewritten:

"(2) Whether, as a result of impermissible conflict as described in ~~G.S. 160A-388(e1)~~, ~~G.S. 160A-388(e)(2)~~, or locally adopted conflict rules, the decision-making body was not sufficiently impartial to comply with due process principles."

SECTION 15. This act becomes effective October 1, 2013, and applies to actions taken on or after that date by any board of adjustment.

In the General Assembly read three times and ratified this the 10th day of June, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:20 p.m. this 19th day of June, 2013



2013 North Carolina Legislation Related to Planning and Development Regulation

Richard D. Ducker, Adam Lovelady, and David W. Owens

The 2013 session of the North Carolina General Assembly marked the first time in modern history that the Republican Party controlled both houses of the legislature and the Governor's Office. While significant amendments were made to state laws in many areas, this shift did not produce major new legislation on planning and development regulation. More substantial changes were made to environmental laws.

One significant legislative initiative was a comprehensive modernization of the statute regarding quasi-judicial decision making and boards of adjustment. New statutes also addressed development near military bases, removal of vegetation for billboard visibility, and billboard repair and replacement. Legislation was considered, but not adopted, to limit use of design standards in development regulation, to eliminate zoning protest petitions, and to change municipal extraterritorial planning jurisdiction.

In related fields, a major initiative was adopted to establish stronger data-driven priorities for transportation funding. New state programs were established to promote energy development, regulate hydraulic fracking for natural gas production, and regulate wind energy projects. Other legislation reconstitutes major environmental regulatory commissions.

Zoning and Development Regulation

Quasi-judicial Procedures and Boards of Adjustment

Session Law (hereinafter S.L.) [2013-126](#) (H 276), effective October 1, 2013, modernizes the board of adjustment statute. The new legislation does not drastically alter the fundamental aspects of the prior law, but it does make several important changes. The bill was proposed by the North Carolina Bar Association. It had general support from most affected parties and was unanimously approved by both the House of Representatives and the Senate.

Richard D. Ducker is Albert and Gladys Coates Term Associate Professor of Public Law and Government at the School of Government. He specializes in land use planning and regulation, code enforcement, and transportation. Adam Lovelady is assistant professor of public administration and government at the School of Government. He specializes in zoning, city and county planning, environmental protection, and historic preservation. David W. Owens is Gladys H. Coates Distinguished Professor of Public Law and Government at the School of Government. He specializes in land use planning and regulation.

The new law includes a number of stylistic and organizational changes to clarify the statute. Outdated, awkward, and confusing language and syntax are removed. Gender-neutral language is used throughout. Related provisions are consolidated and section headings are added for readability. The separate section on boards of adjustment in the county statutes is repealed and replaced with Section 153A-345.1 of the North Carolina General Statutes (hereinafter G.S.), a cross-reference to the city statute. This change eliminates current and future city-county differences. The law incorporates reference to recent legislation (G.S. 160A-393) on judicial review of quasi-judicial decisions.

The act also modernizes the statute and establishes uniform procedures to be applied across the state. Several provisions were added to the statutes to codify case law on various points, particularly the basic due process rules for all quasi-judicial zoning matters set by *Humble Oil & Refining Co. v. Board of Aldermen*, 284 N.C. 458 (1974).

Specialized Boards

In addition to the standard board of adjustment, G.S. 160A-388(a) now authorizes (but does not require) appointment of specialized boards to hear technical appeals. Some cities and counties have expressed an interest in having such special boards to hear appeals on stormwater plans, subdivision plats, or other engineering and technical matters. The law also continues to allow an ordinance to designate the planning board or governing board to hear any quasi-judicial matter.

Notice of Hearings

G.S. 160A-388(a2) creates a uniform notice requirement for hearings on quasi-judicial matters. The prior law required “reasonable notice to parties,” and local ordinances defined this notice in varying ways, if at all. The new notice provisions are similar to those required for a zoning map amendment, with the exception that newspaper published notice is not mandated. Notice of the hearing must be mailed to the person who submitted the application that is the subject of the hearing, the owner of the affected property (if that is not the person requesting the hearing), adjacent owners, and anyone else entitled to mailed notice under the local ordinance. A notice of the hearing must be posted on or adjacent to the site that is the subject of the hearing. Both the mailing and posting must be made in the ten- to twenty-five-day period prior to the hearing.

Hearing Process

Reflecting the law established in *Humble Oil*, G.S. 160A-388(e2) provides that decisions must be based on competent, material, and substantial evidence in the hearing record. The new law makes several adjustments to hearing practices. G.S. 160A-388(f) authorizes the board’s clerk to administer oaths to witnesses. Previously the law provided that the board chair would administer oaths, which is still also allowed. G.S. 160A-388(g) clarifies the process for requesting and objecting to subpoenas. Requests are made to the board chair by a person with standing to participate in the hearing. The chair is to issue subpoenas that are “relevant, reasonable in nature and scope, and not oppressive.” The chair is also to rule on motions to quash or modify a subpoena. Appeals of rulings on subpoenas may be made to the full board. False testimony under oath remains a misdemeanor, but the provision of the prior law limiting the use in any subsequent legal action of testimony made pursuant to a subpoena is now deleted.

Decisions

Again codifying the law from *Humble Oil*, G.S. 160A-388(e2) provides that decisions must be in writing and reflect the board's determination of contested facts and the application of those facts to the applicable standards. The statute goes on to provide that the decision must be made in a reasonable time and be signed by the chair or other duly authorized member. The decision is effective when it is filed with the clerk to the board or another official specified by the ordinance. The decision must be delivered to the applicant, the property owner, and any other person who prior to the effective date submitted a written request for a copy of the decision. It can be delivered by personal delivery, electronic mail, or first-class mail. The person required to make delivery must certify that proper notice of the decision has been made.

These changes strongly suggest that a letter or other written decision document should be prepared for each quasi-judicial decision. In the past some boards relied on the minutes of the board meeting to serve as the written record of its decisions.

Appeals

G.S. 160A-388(a1) defines the decisions that are subject to these appeals. It codifies the rule on the jurisdiction of the board by specifying that the decisions that can be appealed to the board are "any final and binding order, requirement, or determination" made by an administrative official charged with enforcement of a zoning or unified development ordinance. The ordinance may, but is not required to, assign appeals of decisions on other development regulations to the board of adjustment.

A number of changes were made regarding appeals to the board of adjustment. G.S. 160A-388(b1) consolidates the provisions on these appeals.

Appeals are initiated by a person with standing to appeal. A notice of appeal must be filed with the city or county clerk and must state the grounds for the appeal. New issues may be raised at the hearing, but if doing so would unduly prejudice a party, the board must continue the hearing to allow time for an adequate response.

The act adds a uniform time to make appeals to the board. Appeals must be filed within thirty days of notice of a final, binding administrative decision. Previously the law allowed each individual ordinance to set a time limit for making an appeal.

A question now arises of when this thirty-day period begins to run. G.S. 160A-388(b1)(2) stipulates that a final, binding determination by a zoning administrator must be provided in writing and delivered by personal delivery, electronic mail, or first-class mail to the person requesting it. That person then has thirty days from receipt of the decision to make the appeal. Any other person with standing, such as an affected neighbor, has thirty days from receipt of actual or constructive notice of the decision to file an appeal. An example of actual notice would be receipt of a copy of the decision, such as is provided to the person requesting the decision. Constructive notice can be provided by activity on the site, such as grading, surveying, or other clearly visible indicators that a regulatory determination has been made. Constructive notice can, however, be nebulous. For example, if the determination addressed building height or a particular land use, the construction or activity on site would have to proceed to the stage that the implications of the determination become visible to a neighbor. G.S. 160A-388(b1)(4) adds an alternative for owners who want a more definitive point for determining that constructive notice has been provided. It gives the landowner the option of posting notice of the determination on the site to provide constructive notice to parties who may appeal that determination to the board of adjustment. This posted notice can be provided for zoning or subdivision determinations and

is the responsibility of the owner, not the local government. It is not mandatory unless the local ordinance requires it. Posted signs must be prominent, must include contact information for the local official making the decision, and must remain on the site for at least ten days. The owner must verify the posting to the local government. If a posting is made, constructive notice has been provided, and the thirty-day period to appeal begins to run from the date the notice is first posted.

Once an appeal is made, the official who made the decision being appealed must compile all of the documents and exhibits related to the matter and transmit this record to the board. A copy of this administrative record must also be provided to the person making the appeal (and to the landowner if that is not the person making the appeal).

As with the prior statute, an appeal of an enforcement action stays enforcement unless there is imminent peril to life or property or the violation is transitory in nature. In those instances where enforcement is not stayed, the appellant may request an expedited hearing. If that request is made, the board must meet within fifteen days to hear the appeal. An appeal does not stay further processing of permit applications, but the appellant may request, and the board may grant, a stay of a final decision or issuance of building permits pending resolution of the appeal. Such a stay or issuance of a permit does not occur automatically; the appellant must request it.

Zoning officials whose determinations are appealed must appear as witnesses at the appeal hearing.

When the board of adjustment hears an appeal from another board, the statute confirms that the board does not take any new evidence but rather reviews the record made by the other board's hearing. For example, in the review of a decision on a certificate of appropriateness made by a historic preservation commission, the board of adjustment acts as an appeals court and does not conduct a new hearing.

The law also expressly authorizes the parties to an appeal to agree to voluntary alternative dispute resolution (such as mediation). The zoning ordinance may set up procedures to facilitate and manage this process.

The statute eliminates the provision in prior law for the board of adjustment to hear cases involving disputed lot lines. The rationale for this deletion is that the board has no particular expertise on surveying or property boundaries; thus these issues are best resolved judicially if necessary. Since the location of zoning district boundaries is an interpretation of the ordinance, a staff determination of those lines can be appealed to the board.

Finally, the statute now requires only a simple majority vote for board decisions on appeals. Previously a four-fifths vote was required to overturn a staff decision or rule in favor of an appellant on an appeal. The statute was also clarified to provide that only the seats occupied by members eligible to vote on a matter are considered when calculating the requisite majority vote (that is, vacant seats and the seats of members disqualified from voting due to a conflict of interest are not considered in the calculation if no alternate is available to occupy that seat for the matter). The seats of members who are simply absent or who do not vote are counted for calculation of required majorities.

Special and Conditional Use Permits

The only substantial amendment specifically applicable to special and conditional use permits involves voting majorities. G.S. 160A-388(e) now provides that only a simple majority is required for the board of adjustment to issue these permits. A similar change was made in 1981 for governing board and planning board decisions on special and conditional use permits.

Variations

The standard for variations is simplified by deleting the “practical difficulty” language. It retains the requirement for a showing of “unnecessary hardship,” which under North Carolina case law has long been the principal consideration for variations.

One of the more significant substantive changes made by the law is clarification as to what should be deemed an unnecessary hardship. G.S. 160A-388(d) provides that the hardship must result from conditions peculiar to the property (such as location, size, or topography), not the personal circumstances of the applicant. Hardships common to the neighborhood or general public also do not qualify for a variance (on the rationale that those hardships were anticipated and relief from them is more appropriately obtained through an ordinance amendment). A self-created hardship cannot be the basis for a variance, though purchasing the property knowing that circumstances exist that might justify a variance cannot be deemed a self-created hardship (as the new owner essentially steps into the shoes of the prior owner and is eligible to make the same request as that owner could have made). Finally, although the alleged hardship must be real and substantial, the applicant is not required to show no reasonable use could be made of the property without a variance. The statute continues the prohibition on use variations and the requirement that any variance be consistent with the spirit, purpose, and intent of the ordinance. Conditions on variations are also still authorized.

The four-fifths majority vote is retained for variations. Several local governments were subject to local legislation changing the four-fifths majority rule. These new rules are preserved until June 30, 2015, to allow time for consideration of new local legislation if there is an interest in extending these particular provisions.

Variations for development ordinances other than zoning are authorized but not required.

Development near Military Bases

Two new laws affect development and notice of potential development near military bases.

[S.L. 2013-59](#) (H 254) amends provisions regarding notice to military bases concerning adoption or amendment of local land use ordinances. It amends G.S. 160A-364(b) and G.S. 153A-323(b), which previously required notices of pending zoning map amendments be provided to base commanders. The updated law, effective May 22, 2013, expands the types of development regulation notices that must be submitted to the military base for review and comment. If no comments are received in thirty days, the opportunity to comment is deemed to be waived.

If the ordinance changes affect areas within five miles of a base perimeter, written notice must now be provided for the following:

1. Zoning maps
2. Permitted land uses
3. Telecommunication towers and windmills
4. New major subdivision preliminary plats
5. An increase in the size of an approved subdivision by more than 50 percent of its land area

While the statute addresses submission of proposed ordinances for review and comment, the last two items listed above concern individual project review rather than legislative amendments, thereby creating some ambiguity.

[S.L. 2013-206](#) (H 433) addresses construction of structures over 200 feet tall near military bases. The law (G.S. 143-151.70 to G.S. 143-151.77) is known as the “Military Lands Protection

Act of 2013” and is effective October 1, 2013. It applies to specified major military installations, including Fort Bragg and Pope Airfield, Seymour Johnson and the Dare County bombing range, Camp Lejeune (including New River and Cherry Point), the Elizabeth City Coast Guard Base, the ocean terminal at Sunny Point, the Naval Support Activity Northwest (on the Virginia–North Carolina border at Chesapeake), and the radar facilities at Fort Fisher. Associated support facilities for these installations located in the state are also covered.

The law prohibits cities and counties from authorizing (and persons from constructing) buildings or structures over 200 feet tall within five miles of these military bases unless the Building Code Council has issued a letter of endorsement for the structure. Cities and counties may not authorize extension of electricity, telephone, water, sewer, septic, or gas utilities to any unapproved tall structure. Entities proposing a tall structure must submit a notice of intent to seek an endorsement to the affected base commander and must provide such notice and a “Determination of No Hazard to Air Navigation” from the Federal Aviation Administration (FAA) to the Building Code Council. The council submits the application to the base for a review period of up to forty-five days and must deny endorsement if the base determines the proposed structure would interfere with the mission, training, or operation of the military installation or if no FAA determination is provided. The council must act on the application within ninety days. Prior existing tall buildings may not be reconstructed, altered, or expanded in ways that would aggravate or intensify a violation of these requirements. Civil penalties of up to \$5,000 are authorized for violations.

Cell Tower Modifications

Federal legislation in 2012 (47 C.F.R. Part 1, App. B, § I.C.) extending payroll tax cuts and unemployment benefits included a provision broadening federal preemption of local regulation of cell tower modifications. It provides that state or local governments “shall approve” any eligible request to make modifications to an existing wireless tower or base station that do not “substantially change” the tower or base station. Eligible requests include collocation of new transmission equipment and replacement of existing equipment. The Federal Communications Commission in 2013 provided notice that it interprets this law using the same standards for defining a “substantial modification” that were previously set in the context of reviewing collocation agreements and facilities in historic districts.

[S.L. 2013-185](#) (H 664) amends G.S. 160A-400.50 to G.S. 160A-400.53 and G.S. 153A-349.50 to G.S. 153A-349.53 to conform state law to these federal changes. The act notes that it is state policy to facilitate placement of wireless telecommunication support facilities in all parts of North Carolina. It sets state standards regarding expedited review of collocation and minor modifications requests. Minor modifications include the following:

1. Adding not more than 10 percent or the height of one additional antenna array to the tower (with a 20-foot separation from the nearest existing antenna)
2. Adding not more than 20 feet in width or the width of the support structure at the level of the new appurtenance
3. Adding not more than 2,500 square feet to the existing equipment compound

Minor modifications (termed “eligible facility requests” by the statute) must be approved. An application is deemed complete unless the local government objects within forty-five days. Approval is required within forty-five days of an application being deemed complete. If the application is for a collocation that does not qualify as a minor modification, a decision to

approve or deny must be made in the same forty-five-day period. Fees for collocation requests are capped at \$1,000. The fee may not include consultant travel costs or a consultant contingency fee.

Bona Fide Farm Zoning Exemption

The initial authorization for county zoning in 1959 included an exemption for agricultural operations. In recent years the scope of the farming exemption from county zoning has expanded to include silvaculture, horticulture, aquaculture, agritourism, and the like. The trend toward more expansive definitions of exempt activity continued in 2013.

[S.L. 2013-347](#) (S 505) adds grain drying and storage facilities to the county zoning exemption for bona fide farming activities and expands the permissible location of farm activities. This law amends the definition of *agriculture* in G.S. 106-581.1 to include grain warehouses and warehouse operations that receive, load, weigh, dry, and store grain. The zoning exemption in G.S. 153A-340(b) is amended to include these grain storage facilities. G.S. 153A-340(b) is also amended to expand where farming activity can take place and still allow application of the zoning exemption to marketing, selling, processing, storing, and similar activity related to farm products. The law now exempts these activities for farm products produced not only on the farm property within the county's zoning jurisdiction but also those products produced on any other farm owned or leased by the farmer, wherever located.

Fraternity and Sorority Zoning

A special provision related to zoning of fraternities and sororities was tucked in an omnibus regulatory reform bill adopted in 2013. Section 6 of [S.L. 2013-413](#) (H 74) provides that a city or county zoning or unified development ordinance may not differentiate between those fraternities and sororities that are approved or recognized by a college or university and those that are not. If a development ordinance would allow a sanctioned fraternity house in a particular zoning district, it must also allow unsanctioned houses. Similarly, special or conditional use permits for fraternity or sorority houses may not include a condition that the organization be sanctioned by a college.

Development Agreements for Brownfield Sites

Cities and counties are authorized to enter development agreements that create vested rights for up to twenty years for approved development projects. The law provides that sites subject to development agreements have at least 25 developable acres. Section 44 of the omnibus regulatory reform bill adopted in 2013 ([S.L. 2013-413](#)) deletes the minimum acreage requirement in G.S. 153A-349.4 and G.S. 160A-400.23 if the property involved is subject to an executed brownfields agreement.

Definitions for Facilities Serving Food or Providing Lodging

Two sections of the omnibus regulatory reform bill, [S.L. 2013-413](#), amend definitions of facilities subject to state public health regulations. These facilities are often subject to local zoning and development regulation as well. Occasionally local ordinances use or cross-reference the state definitions. Therefore these amendments may have modest effect on some zoning regulations.

Section 11 revises the definition of a *bed and breakfast* inn or home. These are facilities that are the permanent residence of the owner or manager and provide up to eight guest rooms with accommodations for periods of less than a week. The law revises G.S. 130A-247 to allow these

inns to provide three meals a day, provided the meals are not offered to the general public and the cost of any meals is included in the room rate.

Section 7 revises the definition of a *private club* in G.S. 130A-247 to include facilities deemed private clubs under the Alcoholic Beverage Control law in G.S. 18B-1000.

Local Bills

Two local bills modify zoning provisions for individual cities.

[S.L. 2013-264](#) (H 538) repeals G.S. 160A-393 (regarding judicial review of quasi-judicial decisions) and G.S. 160A-377 (appeals of subdivision plat decisions if they involve a quasi-judicial determination) for Apex, effective for quasi-judicial decisions made there after October 1, 2013. The stated purpose of this bill was to allow town board members to continue to communicate with residents about pending quasi-judicial matters. Of course the constitutionally based prohibition on undisclosed ex parte communications in quasi-judicial decision making continues to apply in Apex.

[S.L. 2013-270](#) (S 288) amends the text of the Aberdeen zoning ordinance to allow multifamily housing on three specific parcels totaling seven acres. Other than the multifamily allowance, development on the parcels must comply with the zoning regulations applicable to properties zoned R-10 as of March 1, 1989.

Bills Eligible for Consideration in 2014

In previous legislative sessions, several local governments secured approval to post notices of public hearings on zoning amendments electronically rather than publishing the notices in newspapers. As with several recent sessions, bills were filed in 2013 to add other local governments to this list (H 504) and to extend this option to all local governments (S 186). Newspapers strongly objected to these bills. Senate Bill 287 included a provision to allow electronic notice in lieu of published notice for Mecklenburg and Guilford counties and the municipalities in those counties. The bill passed both houses but was not enacted since a conference report reconciling the differences between the two adopted versions of the bill was not acted upon.

House Bill 769, which passed the House but not the Senate, would prohibit county zoning ordinances from prohibiting the placement of manufactured homes on individual lots in single-family zoning districts (except in historic districts). The bill is eligible for consideration in 2014.

A recurring issue in some communities has been the location of temporary housing for a health care provider on a lot that already has a principal dwelling. A bill on this topic passed the House in 2011 but was not taken up by the Senate. A similar bill, House Bill 625, passed the House in 2013 and is eligible for further consideration in 2014. The bill would require that a temporary residence for a relative providing care for a mentally or physically impaired person be allowed as a permitted accessory use in any single-family zoning district. The bill limits the temporary structure in several ways. It (1) would have had to have been a transportable unit primarily assembled off-site, (2) can be no larger than 300 square feet, (3) is limited to occupancy by one person, (4) cannot be placed on a permanent foundation, and (5) must be removed within sixty days after care giving ceases.

In the waning days of the legislative session, the regulatory reform bill (House Bill 74) was amended to include a provision eliminating zoning protest petitions. After spirited debate this provision was adopted by the House, but it was deleted without debate by the Senate and not included in the version of the bill finally enacted.

Community Appearance and Historic Preservation

Billboards

Two provisions of [S.L. 2013-413](#) (H 74) concern outdoor advertising, one regarding cutting vegetation and the other repair and replacement of billboards.

The North Carolina Department of Transportation (NCDOT) administers permitting for billboards within 660 feet of interstate and federal-aid primary highways. Section 8(a) of [S.L. 2013-413](#) allows owners of those NCDOT-permitted billboards to request tree cutting outside of the standard cut zone along on- and off-ramps as long as it will improve sign visibility and the total area of cutting does not exceed the permitted maximum. Governor McCrory's Executive Order No. 23 calls for NCDOT to consult with local governments before authorizing the expanded cut zone.

Section 8(b) of [S.L. 2013-413](#) provides that local governments may not regulate or prohibit the repair or reconstruction of any billboard with a valid NCDOT permit. Such repair or reconstruction may not, however, increase the square footage of the advertising surface area. The new law explicitly authorizes changing an existing multipole structure to a new monopole structure. Other changes are not expressly authorized or prohibited. Could a sign owner change a conventional billboard to an electronic billboard? Could the owner increase the height of the billboard? The answer is not clear and will depend on the applicable NCDOT rules. North Carolina courts previously affirmed that state permit rules trump local prohibitions against reconstructing nonconforming signs. The new legislation appears to go further and establish protection for repairing and reconstructing both conforming and nonconforming signs.

Enforcement against Terminated Uses

In the case of lawfully nonconforming uses that have been terminated, [S.L. 2013-413](#) now requires that local governments "bring an enforcement action" within ten years of "the date of the termination of the grandfathered status." The new legislation may apply to two separate scenarios: an expired amortization period or the restarting of a former nonconforming use.

First, consider the expired amortization period. Imagine a local government adopted a new ordinance limiting doughnut shops and provided a twelve-month amortization period for existing doughnut shops to comply. After the twelve-month amortization period, existing doughnut shops must comply with the new rules or face enforcement actions. Under the new legislation, the local government must bring such enforcement action within ten years of the expiration of the amortization. After that ten-year period of no enforcement, a noncompliant doughnut shop may continue the activity or use that was originally restricted.

Alternatively, the new legislation could be read to apply to restarting a former nonconforming use. A local government may prohibit the restarting of a terminated nonconforming use for ten years from the time when the nonconforming status expired under the local ordinance. The implication is that after ten years, the nonconforming status may be reestablished. Generally, this is a nonissue; most terminated nonconforming uses are unlikely to relaunch after ten years of inactivity. But there may be a rare circumstance where a use formerly was lawfully nonconforming, sat quiet for eleven years, and then relauches. The local government would not have an option for enforcement except in the case of a public safety concern.

Other Legislation Related to Community Appearance

Additional laws concern matters of community appearance, including chronic violators of public nuisance ordinances, recycling stockpiles, and protection of farm operations.

G.S. 160A-200.1 sets the procedures for notifying chronic violators of a public nuisance ordinance. [S.L. 2013-151](#) (S 211) provides an additional option for notice. In addition to sending notice by registered or certified mail, the municipality may send notice by regular mail. Notice may be deemed sufficient if the regular mail is not returned by the post office within ten days of mailing and the notice is conspicuously posted on the premises in violation. Such notice is sufficient even if the registered or certified mail is unclaimed or refused.

Section 50 of S.L. 2013-413 provides that when nonhazardous recycling materials are stored in properly zoned storage facilities, local governments may not regulate the height or setback of the recyclable material stockpile except when it is on a lot within 200 yards of a residential district.

[S.L. 2013-331](#) (H 646) provides that no ordinance regulating trees may be enforced on land owned or operated by a public airport authority.

[S.L. 2013-314](#) (H 614) amends G.S. 106-701 to expand protection for agricultural and forestry operations (for convenience, a “farm operation”) from nuisance claims. If a farm operation is established for one year and was not a nuisance at the time it began, then an off-site change (new residential development, for example) will not make the farm operation a nuisance. A nuisance may be established if there is a fundamental change in the farm operation, although the legislation limits what may qualify as a fundamental change. Agricultural operations may include, among other things, commercial production of crops, livestock, poultry, and related products and appurtenances. Forestry operations include growing, managing, and harvesting trees. Sawmills are no longer excluded from the definition of forestry operations. If a nuisance claim is brought against a farm operation, attorneys’ fees may be awarded if the losing party (either the plaintiff asserting the claim or the defendant asserting an affirmative defense) made frivolous or malicious claims.

Local Bills

[S.L. 2013-317](#) (H 186) provides that the towns of Cornelius, Davidson, Huntersville, Mooresville, and Troutman may enforce municipal noise ordinances on the waters of Lake Norman, although boat engine noise has special allowance.

[S.L. 2013-182](#) (H 294) authorizes Brunswick and Dare counties to remove abandoned vessels from navigable waters within the counties’ ordinance-making jurisdiction in the same manner as those counties handle abandoned or junked motor vehicles. A vessel is abandoned if: (1) it is moored or anchored without permission of the dock owner for more than 30 consecutive days in any 180 consecutive-day period or (2) it has sunk or is in danger of sinking or is a hazard to navigation or a danger to other vessels. Shipwrecks and underwater remains in place for more than ten years are not considered abandoned vessels and continue in the legal custody of the Department of Cultural Resources.

Bills Eligible for Consideration in 2014: Design Controls

Legislation to limit local regulation of residential design and aesthetics had strong support when it passed the House but stayed in Senate committee. So the Senate could act on House Bill 150 in the 2014 legislative session. This bill prohibits regulation of building design elements for structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings. *Building design elements* are defined to include building color; siding style and materials; roof and porch style and materials; ornamentation; location and styling of windows and doors (including garage doors); and number, type, and layout of rooms. The inclusion of number, type,

and layout of rooms raises questions about other common zoning provisions. Residential units, for example, may be defined based on the number of kitchens included in the living area. The language of the design control bill may limit a local government's ability to define and enforce single-family residential uses.

Exceptions are provided for historic properties and regulations needed for safety codes, for manufactured housing, and for the National Flood Insurance Program. Additionally, design elements may be addressed through conditional use permits and conditional zoning if the owner consents.

Boundary Adjustments and Jurisdiction

Annexation and Extraterritorial Jurisdiction

In 2011 the General Assembly substantially amended state laws on municipal annexation. From 1959 until 2011, municipalities were allowed to annex territory as land became urbanized. When adjacent land met specific standards for population density or land subdivision, the city could unilaterally annex it. In 2011 the law was amended to provide that a proposed annexation was terminated if the owners of 60 percent of the parcels in the proposed annexation area signed an objecting petition. In 2012 the petition process was replaced with a requirement for referendum approval of voters in the area to be annexed prior to municipal annexation. The 2012 legislation also required that cities that provide water and sewer services must extend water and sewer to properties within annexed areas within three and a half years if so requested by a majority of property owners. The city must do this at no cost to the owners.

This year was quiet on the annexation front. No statewide annexation legislation was adopted in 2013. No action was taken on House Bill 79, which would have put forward to the voters a constitutional amendment to require two-thirds of the voters in an area to approve a proposed involuntary annexation and to prohibit exercise of municipal extraterritorial planning jurisdiction.

In recent legislative sessions there has also been a good deal of discussion about limiting municipal extraterritorial planning jurisdiction. As with annexation, no statewide bills were adopted on this topic in 2013. No action was taken on House Bill 276, which would have eliminated authority for municipal extraterritorial planning jurisdiction, or on House Bill 680, which would limit authority to those cities exercising extraterritorial jurisdiction as of 2013.

Local Bills

A number of local bills affecting municipal boundaries were enacted.

Notably, authority to have any extraterritorial jurisdiction was eliminated for Asheville ([S.L. 2013-30](#), H 224). A similar bill affecting Weaverville, House Bill 531, was adopted in the House but not in the Senate. It is eligible for action in 2014. Another bill that received considerable discussion and attention involved a large mixed-use development proposed to be located south of Durham. The owner sought city annexation in order to secure city water and sewer services. The city council denied the annexation and rezoning requests. The General Assembly reversed that decision. [S.L. 2013-386](#) (S 315) requires provision of city utility services to this property at the developer's expense and mandates eventual city annexation.

A number of bills annex specified areas to individual cities. These include areas added to Bessemer City ([S.L. 2013-354](#), H 1015) and Chadbourne ([S.L. 2013-214](#), H 526). Other bills

removed territory from the corporate limits of Grifton (S.L. 2013-315, H 191), Kannapolis (S.L. 2013-217, H 302), Lumberton (S.L. 2013-215, H 567), Marshville (S.L. 2013-213, H 421), Mills River (S.L. 2013-62, H 671), Salisbury (the Rowan County airport, S.L. 2013-60, S 269), and Shelby (S.L. 2013-218, H 409). A specified area was transferred from Kannapolis to Landis by S.L. 2013-212 (H 261). S.L. 2013-219 (H 412) allows Eden to accept fees in lieu of annexation for property occupied by a Duke Energy generating plant.

Two local bills affected authority for noncontiguous annexations (often referred to as satellite annexations). S.L. 2013-32 (S 56) expands this authority for Wallace, while S.L. 2013-248 (S 177) removes it for Hookerton and Maysville.

S.L. 2013-68 (S 257) is the latest in a series of bills clarifying county boundaries, applicable to the Guilford–Alamance County boundary.

Building and Housing Code Enforcement

Inspections

S.L. 2013-118 (H 120) provides that for buildings subject to the North Carolina Residential Code for One- and Two-Family Dwellings (including townhomes), local building code inspectors may only perform those inspections required by the North Carolina Building Code unless the local government has approval from the North Carolina Building Code Council for additional inspections or there are unforeseen or unique circumstances requiring immediate action.

S.L. 2013-160 (H 468) limits permitting for the installation of any natural gas, propane, or electrical appliance to an existing structure if the installer is licensed as a plumbing and heating contractor under G.S. 87-21 or as an electrical contractor under G.S. 87-43. In those cases the local government may only require one permit and the fee may not exceed the cost of any one individual trade permit.

S.L. 2013-117 (H 88) provides that certain “custom contractors” may designate a lien agent on behalf of the property owner for whom the contractor is building a single-family residence.

Building Code Updates

The North Carolina Building Code Council retains authority to periodically revise and amend the State Building Code on its own motion or upon application by a citizen, state agency, or political subdivision. S.L. 2013-118 now provides that the regularized updates to the Residential Code will be every six years rather than every three years. The North Carolina Residential Code for One- and Two-Family Dwellings and related provisions of the Energy Code, Electrical Code, Fuel Gas Code, Plumbing Code, and Mechanical Code will be updated only every six years as well, with the next revision scheduled to be effective in 2019. The act also provides that the Building Code Council will publish on its website and in the North Carolina Register all appeal decisions and formal opinions of the Council.

Building Code Exemptions

S.L. 2013-75 (H 774) extends building code exemptions applicable to certain farm buildings and greenhouses to primitive camps and primitive farm buildings. Primitive camps include structures such as shelters, outhouses, sheds, rustic cabins, tepees, and administrative support buildings. Such structures must be less than 4,000 square feet and not be intended to be occupied for more than twenty-four consecutive hours. Primitive farm buildings include sheds,

barns, and other structures used in relation to traditional or heritage farming. [S.L. 2013-265](#) (S 638) provides that a farm building may maintain exempt status even if used for events such as weddings, receptions, meetings, or demonstrations.

[S.L. 2013-265](#) also exempts buildings used for migrant farmworker housing from fire prevention code sprinkler requirements if the building is one floor and meets certain state and federal requirements.

Section 41 of [S.L. 2013-413](#) (H 74) provides that no building permit is required for routine maintenance of fuel pumps.

Transportation

Strategic Transportation Investments

Perhaps the most significant legislative initiative in the field of transportation was a key part of Governor McCrory's legislative program and served to supersede some of the main features of Governor Perdue's North Carolina Mobility Act, enacted in 2010. The "Strategic Prioritization Funding Plan for Transportation Investments," [S.L. 2013-183](#) (H 817), is intended to allow NCDOT to more efficiently use its existing funds and, according to Republicans, to reduce the political influences on project selection that characterized highway funding arrangements under prior Democratic administrations. Supporters of the act, codified as G.S. 136, Article 14B, also pointed out that many transportation funding formulas were first established in 1989 and needed updating. In any event the new program appears more data-driven than prior transportation improvement programming and based more on analyses of transportation needs. The Strategic Prioritization Funding Plan, however, does not include any new sources of revenue for transportation projects or alter existing ones.

The new formulas are scheduled to be fully implemented by July 1, 2015. Projects funded for construction before then will proceed as scheduled. The Strategic Mobility Formula divides projects into three categories: statewide, regional, and division-level. Projects of statewide significance compete for 40 percent of the available revenue. The selection process for this money depends entirely upon factors such as traffic volumes, accident statistics, impact on economic competitiveness, and freight movement. Regional projects compete for 30 percent of the available revenue, which is divided among seven regions on the basis of population. Each region is composed of two of the fourteen transportation divisions. Some 70 percent of the regional project rating is based on transportation and related data factors; 30 percent of the rating is based on project rankings developed by area transportation planning organizations and NCDOT transportation division personnel. Finally, the act calls for the remaining 30 percent to be shared among all fourteen divisions equally. Half of these project rankings are based on data concerning safety, congestion, connectivity, and the like, and half on more subjective local rankings.

[S.L. 2013-410](#) (H 92), the technical corrections bill, adopted after the Strategic Prioritization Funding Plan act, affects local input regarding regional and division-level fund distribution. It requires the transportation division engineer to take into account public comments. It directs NCDOT to ensure that "the public has a full opportunity to submit public comments, by widely available notice to the public, an adequate time period for input, and public hearings."

The Strategic Prioritization Funding Plan act, [S.L. 2013-183](#), repeals the 1989 distribution formula as well as provisions establishing the Intrastate Highway System, as defined with regard

to the 1989 Highway Trust Fund and the Urban Loop Program. However, some projects authorized under these programs that will be underway by July 1, 2015, will continue as programmed construction projects. The act calls for capital expenditures to come solely from the Highway Trust Fund instead of both the Highway Fund and the Highway Trust Fund. Operations and maintenance are now to be funded from the Highway Fund. This new delineation allows about \$1.5 billion in additional funds to be spent on capital projects over ten years.

Funds to support secondary road needs are substantially reduced. Sections 2.1 to 2.9 phase out the Highway Fund secondary road construction program by June 30, 2014, limiting funding to maintenance and improvement. The act continues to require that the NCDOT secondary road maintenance and improvement program funding be based on a uniformly applicable formula and clarifies that the system for distributing funds does not apply to projects to pave unpaved secondary roads. Arrangements for the paving of these roads are more dramatically altered. Section 2.6(c) repeals an earmarked source of funds for this program, a requirement that \$15 of each vehicle title application fee be deposited into the Highway Trust Fund and used for secondary road paving. Funding from the Highway Fund is still possible, but Section 2.5 provides that projects must be selected on the basis of statewide, rather than county, prioritization.

Section 4.5 of the act amends G.S. 136-66.3, the statute governing local participation in state transportation projects, to repeal the provisions that prohibit local governments from thereby being disadvantaged with respect to other projects and that limit NCDOT funding in exchange for the participation.

S.L. 2013-183 also changes the way state aid for municipal streets (Powell Bill funds) is handled. Section 4.8 of the act repeals the Highway Trust Fund supplement to Powell Bill funds. Section 3.1 amends G.S. 136-41.1 to change the amount of Highway Fund revenues allocated to cities from $1\frac{3}{4}$ cents per gallon of the motor fuels tax to 10.4 percent of the net amount generated during the fiscal year. These new allocations are intended to ensure that municipalities receive as much Powell Bill funding over the next five years as they would have under prior formulas. Section 3.5 provides another sign of things to come. It directs NCDOT to collect lane-mile data from each municipality eligible to receive funds and to do so by December 1, 2013. It must then report by March 1, 2014, to the Joint Legislative Transportation Oversight Committee concerning at least three options to change the distribution formula to include lane-mile data. On another front, Section 3.1 also amends G.S. 136-41.3(a) to allow Powell Bill funds to be used by cities for greenways as well as bikeways and sidewalks and to be used for these facilities regardless of whether they are located within public street rights-of-way. In addition, Section 3.4 allows cities to use funds for independent bicycle and pedestrian improvement projects inside town limits or within the area of the applicable Metropolitan Transportation Planning Organization (MPO) or Rural Transportation Planning Organization (RPO).

Section 5.1 of the Strategic Prioritization Funding Plan act expands the role of the North Carolina Turnpike Authority. It authorizes the authority to undertake nine projects. Five projects are already named in existing law: the Triangle Expressway (consisting of four different segment projects) and the Monroe Connector. Three Turnpike Authority projects previously authorized in G.S. 136-89.183—the Cape Fear Skyway, the mid-Currituck bridge, and the Garden Parkway (Gaston County)—are specifically deleted, and other sections of the act repeal specific gap funding for the last two of these. The four remaining authorized projects must meet the following conditions: two must be ranked among NCDOT's top thirty-five projects, and either or both may be subject to a partnership agreement. Of the other two, one may be subject to a partnership agreement. All four must be included in the appropriate local transportation

plan and the current state Transportation Improvement Program. Toll projects must also be approved by the affected MPO and RPO.

Sections 5.7 and 5.8 concern the southeastern segment of the Triangle Expressway. They direct NCDOT to “strive to expedite” the federal environmental impact statement process to define the route and the Joint Legislative Transportation Oversight Committee to monitor the process. Essentially identical language is found in [S.L. 2013-94](#) (H 10). The story behind this segment of the expressway has unfolded over several decades. Possible future locations of the segment were protected in the 1990s by NCDOT through the adoption of roadway corridor official maps. However, one primary corridor protected in the mid-90s involved certain environmental and transportation planning problems. So highway planners refocused their attention on two alternative routes for this portion of the expressway segment. A route alternative more to the north (the “red route”) would cut through a relatively developed, populated area of southern Garner. Presentation of this red route to the public resulted in significant local opposition. As a result, in 2011 the General Assembly amended G.S. 136-89.183(a)(2)a. to prohibit consideration of that alternative. However, federal highway authorities determined that the environmental impacts of the red route should be formally considered as an alternative, even if a third route (the “orange route”) was ultimately chosen as most appropriate. With the southeastern portion of the Triangle Expressway thus in limbo, the General Assembly in 2013 added Sections 5.7 and 5.8 to S.L. 2013-183 to delete the 2011 language prohibiting the location of the expressway in the “red” corridor. This change will enable the federal environmental impact statement process to proceed for the southeastern segment of the Triangle Expressway and, if the General Assembly has its way, for the process to be expedited.

Section 5.2 of the act allows NCDOT or the Turnpike Authority to enter into three partnership agreements with private entities for projects, subject to various requirements, including mandated public hearings on applicable toll rates. Section 5.3 authorizes the authority to retain and enforce tolls and fees and to designate high-occupancy toll (HOT) lanes. It also expands the purposes for which the authority may use revenues derived from turnpike projects.

Finally, Section 6.1 of S.L. 2013-183 requires NCDOT to submit reports to the General Assembly on its recommended formulas for ranking projects in the new Strategic Prioritization Plan on August 15, 2013, October 1, 2013, and January 1, 2014. Section 6.2 requires the department to submit reports to the General Assembly on its transition to the new plan on March 1, 2014, and November 1, 2014.

NCDOT Driveway Permits

NCDOT has adopted rules and policies concerning the size, location, direction of traffic flow, and the construction of driveway connections into State Highway System roads. In exercising this authority under G.S. 136-18(29), NCDOT may require the construction and public dedication of acceleration lanes, deceleration lanes, traffic storage lanes, and medians as they connect with any United States route, North Carolina route, or any secondary road route with an average daily traffic volume of at least 4,000 vehicles per day. These requirements, however, must be adequately related to the traffic generated by the development served by the driveway.

[S.L. 2013-245](#) (H 785) allows NCDOT to establish a statewide pilot program for sharing the costs of “oversized” transportation improvements in connection with driveway permits that should not legally be assigned to a single driveway permit applicant. The department is authorized to develop a formula for apportioning costs on a project-by-project basis between NCDOT

and private property developers. A developer is not required to participate in the program in order to obtain any necessary driveway permit.

The department must report on the pilot program to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division of the Legislative Services Commission no later than the 2021 legislative session.

A second act, [S.L. 2013-137](#) (H 684), concerns stretches of roadway where minimum sight distances between driveways are not established in NCDOT's "Policy on Street and Driveway Access to North Carolina Highways." This uncodified law directs the department to "consider exceptions" to the sight-distance requirements for driveway locations where road curves are close and frequent. The law then directs that exceptions must be granted where sufficient sight distances can be provided through the use of advisory speed signs, convex mirrors, and advanced warning signs. NCDOT may also consider lowering the speed limit on the relevant "curvy road." S.L. 2013-137 expressly permits NCDOT to assign the cost to the applicant of installing appropriate signage (speed limit reduction and driveway warning signs) around the driveway and installing and maintaining convex or other mirrors to increase traffic safety. The law directs the department to report to the Joint Legislative Oversight Committee on Transportation on the implementation of the law within 180 days of the date the act became law (June 19, 2013).

Sidewalk Dining

One of the more intriguing legislative actions this year could renew interest in sidewalk dining in municipalities across the state. Until July 13, 2013 (the effective date of the act described below), NCDOT lacked authorization to allow restaurants to serve food and drink on sidewalk tables located within the right-of-way of a state highway or street. Municipalities have been free to allow or encourage the use of the right-of-way of city streets for this purpose. However, in many towns and cities at least some of the streets in downtown or other pedestrian-oriented areas are maintained by NCDOT. Even where wide sidewalks run along the business routes of U.S.- or N.C.-numbered roads, abutting restaurant owners were not free to serve customers seated at tables on sidewalks within the NCDOT right-of-way.

[S.L. 2013-266](#) (H 192) amends G.S. 136-18(9) and adds a new G.S. 136-27.4 to address this issue. Rather than delegate permitting authority directly to affected local governments, the act authorizes NCDOT to enter into an agreement with a city or county that wishes to allow the use of state rights-of-way within the local government's zoning jurisdiction. Certain standards apply. The posted speed permitted on the street adjacent to the sidewalk dining area may not exceed 45 miles per hour. Restaurant furniture must be placed at least 6 feet from any street travel lane and in a way that would permit at least 5 feet of unobstructed paved sidewalk to remain clear and offer adequate passing space. In addition, any benefitting restaurant owner must provide evidence of adequate liability insurance that protects both the local government and NCDOT and agree to indemnify either of them in case of any claim arising from the operation of sidewalk dining activities. Nothing prevents either the local government or NCDOT from refusing to allow such activities if they cannot be conducted in a safe manner. If the street or highway involved is a federal-aid route, then sidewalk dining activities must also be permitted by the Federal Highway Administration.

Ethics Standards for MPO and RPO Members

[S.L. 2013-156](#) (S 411) is intended to restrict various ethics requirements (such as submitting a statement of economic interest) to voting members of Metropolitan Transportation Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs). Legislation adopted in 2012 had expanded state ethics requirements to MPO and RPO employees and advisory committee members as well. This regulatory reach was likely greater than originally intended.

Charlotte Airport

The General Assembly adopted two acts concerning Charlotte Douglas International Airport, which is currently owned and operated by the City of Charlotte. The first ([S.L. 2013-272](#) (S 380)) would have transferred airport ownership and control to a newly created regional airport authority. Soon after this act became effective, the City of Charlotte obtained a court-issued temporary restraining order prohibiting the transfer. In response, legislators passed a second act ([S.L. 2013-358](#) (S 81)) to avoid the conclusion that the first legislative action was unauthorized. It created an airport commission that would be an agency of city government responsible for all airport operations. The city retains ownership of the airport assets. The matter seems to be headed to court.

Environment

Preemption of New Environmental Ordinances

Section 10.2(a) of [S.L. 2013-413](#) (H 74) acts as a moratorium on local ordinances related to environmental issues through October 1, 2014. Under the new law, a local government may not enact an ordinance regulating a field that is also regulated by a state or federal statute or rule enforced by an environmental agency unless that local government approves the ordinance by unanimous vote of the members voting.

The defined *environmental agencies* include, among others, the Department of Environment and Natural Resources (DENR), the Environmental Management Commission (EMC), the Coastal Resources Commission, the Commission for Public Health, and the Sedimentation Control Commission. Given the broad coverage of the agencies identified as environmental agencies, this preemption rule covers many topics traditionally addressed by local regulation, such as stormwater controls, sedimentation controls, and stream buffers.

In conjunction with the moratorium on local environmental ordinances, the new law directs the Environmental Review Commission (ERC) to study the circumstances in which a local government should be able to regulate a field also regulated by environmental agencies. The commission will report its findings during the 2014 Session.

The legislation prohibits *enactment* of ordinances, except by unanimous vote. A plain reading of the law finds that existing ordinances may be maintained and enforced.

Membership of State Environmental Commissions

Section 14.23(a) of [S.L. 2013-360](#) (S 402) alters the membership of the EMC, the Coastal Resources Commission, and the Coastal Resources Advisory Commission. The new law terminates the terms of prior board members and adjusts the required qualifications for commission members. The EMC has been reduced from nineteen to fifteen members. Under the former

law, nine of the board members must not have had significant financial income from regulated industries or individuals. The new law eliminates that requirement. The Coastal Resources Commission now has thirteen members (previously, fifteen). The Coastal Resources Advisory Council now has twenty members (previously, forty-five).

Permitting Review

Section 58.(a) of S.L. 2013-413 provides that the DENR, along with the Departments of Transportation and Health and Human Services and certain local governments, will review the process for environmental permit programs. The review will include examination of the role of professional engineers and the unauthorized practice of engineering, the scope of review of each permitting process, and ways to streamline the permit process. DENR will report its findings to the ERC by January 1, 2014. The ERC, in turn, will study the matter with the North Carolina State Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina and report its findings to the 2014 General Assembly.

Stormwater and Water Quality

[S.L. 2013-395](#) (S 515) delays implementation of the Jordan Lake Rules until July 1, 2016. Jordan Lake has suffered from poor water quality resulting from upstream runoff since the lake's initial impoundment in 1983. In response, the General Assembly instructed the state EMC to address the high nitrogen and phosphorous levels in the lake. The rulemaking process began in the late 1990s when the EMC established a reservoir model and continued through stakeholder meetings and refinements from 2003–2008. The final rules were approved by the EMC in 2008. The General Assembly modified some provisions of the rules during the 2009 legislative session. The new act delays implementation until 2016. For additional information, see DENR's [Jordan Lake Rules](#) background materials.

For local governments enforcing the Sedimentation and Pollution Control Act, Section 33 of S.L. 2013-413 provides that a notice of assessment must state that the violator must either pay the assessment or contest it within thirty days.

For implementation under the state's stormwater runoff rules and programs, Section 51.(a) of S.L. 2013-413 excludes wooden slatted decks, the water area of swimming pools, or gravel from the definition of *built-upon area* in G.S. 143-214.7.

Section 52.(a) of S.L. 2013-413 exempts agricultural ponds from riparian buffer rules.

[S.L. 2013-121](#) (H 279) authorizes DENR to transfer stormwater runoff permits, water pollution source permits, and approved erosion and sedimentation control plans to new property owners provided there is no substantial change to the permitted activity. The department may not impose new or different terms and conditions upon such permits or plans without consent of the new owner except to comply with changes in law since the original permit issuance. The transfer of an erosion and sedimentation control plan is subject to the same local government review as for initial plan approval. Local governments administering erosion and sedimentation control programs are similarly authorized to transfer erosion and sedimentation control plans to new property owners.

[S.L. 2013-82](#) (H 480) directs DENR to develop Minimum Design Criteria for stormwater runoff permits. The department will submit its recommendations to the ERC by September 2014. In conjunction, the EMC will adopt rules to allow fast-track permitting without technical review for stormwater management system plans that comply with the Minimum Design Criteria and are prepared by professionals determined by the commission to be qualified to do so.

Surface Waters and Shorelines

Section 56.(a) of S.L. 2013-413 allows any water treatment plant authorization that has expired within the last ten years to be reauthorized to allow its system to withdraw surface water at the same rate from the same water body as in the expired authorization. Reauthorization does not require the state environmental document typically required for authorizations.

During a declared water shortage emergency, S.L. 2013-265 (S 638) allows a landowner to continue to withdraw water for agricultural activities from surface waters wholly located on the landowner's property or from groundwater sources unless the applicable state agency determines that the groundwater withdrawal causes negative impacts on neighboring groundwaters.

S.L. 2013-265 directs DENR and the N.C. Department of Transportation to jointly petition the Wilmington District of the U.S. Army Corps of Engineers to allow greater flexibility to perform stream and wetland mitigation outside of the immediate watershed where the impacting development occurs.

S.L. 2013-384 authorizes cities to enforce local ordinances to protect the public's rights to use state ocean beaches and to regulate placement of personal property on these beaches. Cities may enforce such ordinances on state ocean beaches within or adjacent to the municipal boundaries. The North Carolina Court of Appeals recently held in *Town of Nags Head v. Cherry, Inc.*, ___ N.C. App. ___, ___, 723 S.E.2d 156, 157, *appeal dismissed*, 366 N.C. 386, 732 S.E.2d 580, *review denied*, 366 N.C. 386, 733 S.E. 2d 85 (2012), that only the state has authority to protect the public's rights to use the state's public trust ocean beaches. The new legislation responds to the *Cherry* case and clearly authorizes municipalities to enforce local ordinances on public trust ocean beaches. The issue of whether counties are authorized to enforce similar ordinances on beaches has not been addressed .

S.L. 2013-384 also adjusts legislation enacted in 2011 regarding terminal groins on ocean beaches. In the 1980s the Coastal Resources Commission adopted regulations to prohibit "shoreline hardening" of ocean beaches. While measures such as beach nourishment were allowed, construction of bulkheads, seawalls, groins, jetties, and similar "hard" structures that attempt to stabilize the shoreline location was prohibited. The General Assembly codified this general policy into the statutes in 2003. In 2011, G.S. 113A-115.1(d) was adopted to require permitting up to four terminal groins constructed in association with beach nourishment projects. The statute specified the analysis and information needed for permit applications for terminal groins and required a plan to monitor, mitigate, and finance mitigation of any adverse project impacts. S.L. 2013-384 amends this statute by: (1) allowing terminal groins to include more than one structure; (2) deleting the requirement for a showing that structures be "imminently" threatened as a prerequisite to the project and that nonstructural alternatives are impractical; (3) providing that the mitigation plan may not impose costs that exceed the benefits of the nourishment project; (4) allowing use of local taxes and property owners' association assessments as financial assurances for management plan implementation; and (5) deleting the requirement that the management plan include restoration of public, private, or public trust property rights adversely affected by the project. The law also repeals DENR authority to adopt implementing rules.

Solid Waste

S.L. 2013-409 (H 321) provides that local governments are no longer required to adopt a solid waste management plan. Local governments still must report annually to DENR on the locality's solid waste management program, and topics previously included in the solid waste

management plan are now required in the report. These include disaster debris management, scrap tire disposal, white goods management, prevention of illegal dumping and litter, and abandoned manufactured homes (if a county opts to manage those).

[S.L. 2013-55](#) (H 706) provides that demolition debris from decommissioned manufacturing buildings—including electric generating stations—may be disposed on-site and is exempt from permitting as a solid waste management facility. In order to qualify, the material disposed must be inert debris (such as masonry, sand, gravel, or concrete) categorized as nonhazardous. The disposal must be within the footprint of the decommissioned building, be at least 50 feet from the property boundary, be 500 feet from the nearest drinking well, positioned to avoid the seasonal high groundwater table, be covered with 2 feet of graded soil, and comply with other applicable laws. The location of the debris must be filed with the county register of deeds and certified to DENR. Subsequent land transactions must state that the property contains demolition debris.

Under prior law sanitary landfills could not be located within one mile of state game lands. [S.L. 2013-25](#) now provides that a sanitary landfill may be sited as close as 500 feet from state game lands if it is limited to demolition debris, is located within the boundaries of a municipality with a population of less than 15,000, and is separated from the game land by a primary U.S. highway.

Energy

[S.L. 2013-365](#) (S 76) directs the Mining and Energy Commission, with assistance from other agencies, to study creation of a comprehensive environmental permit for hydraulic fracturing, the appropriate rate of severance tax, and registration requirements for land men (oil and gas workers). In addition, the legislation revises the membership of the Mining and Energy Commission, revises membership and adjusts responsibilities of the Energy Policy Council, allocates offshore energy revenues, addresses bonding requirements, and amends provisions for allocating “allowables” in oil production.

[S.L. 2013-51](#) (H 484) directs DENR to oversee permitting for wind energy facilities. The permitting applies to installation and expansion of facilities with a rated capacity of at least 1 megawatt. The permitting process will include submission of preapplication materials, notice to relevant agencies and parties, preapplication site evaluation, a scoping meeting, application and fees, and public notice and hearing. In addition to meeting applicable site-specific permit conditions, applicants must provide financial assurance for decommissioning and annual monitoring reports. The review process will consider risks to civil and military air travel and operations as well as impacts to species and habitats. Written notice will be provided to the Corps of Engineers, the U.S. Fish and Wildlife Service, the N.C. Wildlife Resources Commission, the commanding officer of potentially affected military installations, and other relevant parties. The criteria for permit approval include consideration of impacts to military and civilian air operations, impacts to cultural and natural resources, obstruction of navigation channels, applicable Mountain Ridge Protections, and any applicant compliance with other federal, state, and local requirements, including zoning.

Other Environmental Matters

[S.L. 2013-242](#) (H 628) directs that when undertaking major facility construction and renovation, state agencies will follow the requirements of the Sustainable Energy-Efficient Buildings Program only if DENR determines that the cost of the project plus ten years of operation costs would be less if the agency followed the requirements than if it did not. Third-party certification expenses must be included in the cost calculation. Renovation projects with guaranteed energy savings contracts are exempt from the savings calculation requirement. Building rating systems used for the Sustainable Energy-Efficient Buildings Program must provide credit for—and not disadvantage—building materials manufactured and produced within North Carolina.

[S.L. 2013-388](#) (S 341) authorizes the EMC to modify certificates for interbasin water transfers upon request by the certificate holder, the submission process for certain documentation by the certificate holder, and the procedures for public notice and hearing and document-related findings.

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NOTICE OF PUBLIC HEARING AMENDMENT TO LAND DEVELOPMENT STANDARDS

TAKE NOTICE, that the Town of Waynesville Board of Aldermen will hold a public hearing at its regular meeting on May 27, 2014 at 7:00 PM, or as soon after as possible, in the Board Room of Town Hall at 9 South Main Street, Waynesville, NC to consider amending the Town of Waynesville Code of Ordinances (Sections 15.2 through 15.13) regarding quasi-judicial hearing procedures adopted in the 2013 Legislative Session (Session Law 2013-126).

The proposed changes are available in the Planning Office or the Town Clerk's office.

Persons wishing to be heard at the public hearing are asked to be present.

This the 15th Day of May, 2014.

s/ Amie Owens
Town of Waynesville

By: Amie Owens, Town Clerk

**TOWN OF WAYNESVILLE BOARD OF ALDERMEN
REQUEST FOR BOARD ACTION
Meeting Date: May 27, 2014**

SUBJECT: Public Hearing -- Boards and Commissions Manual and subsequent ordinance changes

AGENDA INFORMATION:

Agenda Location: New Business
Item Number: 5B
Department: Administrative Services
Contact: Amie Owens, Town Clerk
Presenter: Marcy Onieal, Town Manager

BRIEF SUMMARY: Information has been compiled on all Boards and Commissions including vital records, procedures, duties and powers, and processes for member replacements, including current rosters for each group. This information will be used as part of the general orientation for board members. In addition to the Boards and Commissions Manual, changes to the Code of Ordinances related to membership and meeting schedules is presented allowing for the Board of Aldermen to administratively change the membership number or meeting schedule without having to amend the Code of Ordinances each time such a change was suggested.

MOTION FOR CONSIDERATION: To approve amendments to the Town of Waynesville Code of Ordinances regarding composition and meeting schedules of town boards and commissions and to adopt the Boards and Commissions manual as presented.

FUNDING SOURCE/IMPACT: N/A

ATTACHMENTS:

- Boards and Commissions Manual
- Proposed Changes to the Code of Ordinances – Article IV, Div. 1 Sections 2.126-2.128, 2.146(a) and (j), 2.166, 2.191
- Proposed Changes to Chapter 14 of the Land Development Standards
- Proposed Changes to Ordinance 04-06 and Amended Ordinance for signature
- Notice of Public Hearing published on May 19th

MANAGER'S COMMENTS AND RECOMMENDATIONS: Open and close public hearing. Approve amendments to the Code of Ordinances and adopt Boards and Commissions Manual.

Town of Waynesville Board/Commissions Manual





TOWN OF WAYNESVILLE BOARDS AND COMMISSIONS MANUAL

- A. INTRODUCTION
- B. POLICIES CONCERNING BOARDS AND COMMISSIONS
- C. DUTIES OF CHAIR PERSON
- D. OPEN MEETINGS PROPER NOTIFICATION AND RECORDKEEPING
- E. PROCEDURE FOR TAKING MINUTES
- F. ORDER OF BUSINESS
- G. TERMS AND DUTIES OF BOARDS/COMMISSIONS

- TAB 1 ALCOHOLIC BEVERAGE CONTROL BOARD (ABC Board)
- TAB 2 BOARD OF ADJUSTMENT (Zoning Board of Adjustment)
- TAB 3 COMMUNITY ACTION FORUM
- TAB 4 FIREFIGHTERS' RELIEF FUND BOARD
- TAB 5 HISTORIC PRESERVATION COMMISSION
- TAB 6 PLANNING BOARD
- TAB 7 RECREATION & PARKS ADVISORY COMMISSION
- TAB 8 WAYNESVILLE HOUSING AUTHORITY
- TAB 9 WAYNESVILLE PUBLIC ART COMMISSION

A. INTRODUCTION

The Town of Waynesville Board of Aldermen consists of a Mayor and four Aldermen who are elected at large in a non-partisan election. The Mayor and Board of Aldermen hold four (4) year concurrent terms. All positions on the Board of Aldermen are elected at the same time during the municipal elections held every four years. This body is the governing board for the Town. The governing board has the authority to adopt policies for the Town and is responsible to the citizens to ensure that the Town responds to public needs and works to meet those needs.

The Town also has appointed boards and commissions that provide opportunities for many citizens to assist the elected governing board in shaping public policy. State law requires that some of these boards and commissions (such as the Alcoholic Beverage Control Board) play a direct role in selecting agency heads and setting operating policies for the agency. Other boards and commissions are established by the Board of Aldermen to advise them directly on matters ranging from land use to recreation. In some cases, at least some of the members of an appointed board or commission must be residents of the Town or have other specific qualifications.

Advisory board and commission members are responsible directly to the Board of Aldermen. While different members of the staff of the Town of Waynesville are assigned by the Town Manager to assist various boards and commissions in their endeavors, the members of the advisory boards and commissions are appointed by and directly accountable to the Board of Aldermen. Chairs of the various advisory groups are requested to appear annually before the Board of Aldermen and report on the activities of their commission or board. The annual reporting schedule is kept by the Town Clerk. Chairs may request to report to the Mayor and Board of Aldermen in order to provide updates and information as necessary. The governing body and their advisory boards should work to facilitate an optimal working relationship and to promote a better understanding of the endeavors in which the various boards and commissions are involved.

The Town of Waynesville is fortunate to have a wealth of people with special expertise and qualifications who volunteer to serve on appointed boards and commissions. Many of these people have a particular concern or interest for the subject the board or commission deals with. This is especially important to the success of these boards and commissions in helping to represent the best interests of the Town.

B. POLICIES CONCERNING BOARDS AND COMMISSIONS

Terms of Office

Advisory board and commission members are appointed by and serve at the pleasure of the Board of Aldermen. Appointments for all advisory bodies are made for three (3) year terms of office unless otherwise specified via enabling legislation. Terms on various boards and commissions are overlapping so as to avoid replacement of all members of any board at a single time. All terms shall become effective on July 1 and shall remain in effect until June 30 of the last year of the term. The exception is any appointment required to fill the balance of unexpired terms shall become effective upon the appointee having taken the oath of office.

Term Limits

The Board of Aldermen has expressed their preference to limit advisory board and commission members' terms of service to two consecutive terms; however, they have reserved the right to override that preference when they deem the circumstances of an individual's service to the community to be of such notable importance as to warrant a continuation of service. In those situations where the Board of Aldermen deems special circumstances to exist that warrant the continuation of community service by an individual on a board or commission, any member of the Board of Aldermen may place the name of that individual into nomination and state that they believe special circumstance to warrant a continuation of service. The Board of Aldermen may then reappoint said individual by voting in no less than a 4/5 majority of the membership to reappoint the individual to another term of office. This process may be repeated as often as the Board of Aldermen deems the special circumstances to warrant an additional appointment.

A person who has served more than two-thirds of a full term after being appointed to complete the term of a previous board member shall be considered to have served a full term for the purposes of determining eligibility under the provisions of this section.

Vacancies

When a vacancy occurs on a board or commission due to a resignation or the end of a three (3) year term, the Town Clerk's office should be notified by the chair of that board or commission as soon as possible. The vacancy will be advertised in the Mountaineer and posted on the Town of Waynesville website. The notice will instruct persons interested in being considered for appointment to fill out an Application for Appointment and set an application deadline. The notice shall contain any residency restrictions for the board or commission. The deadline for the applications should be submitted to the Town Hall is the Friday at least 10 days prior to a regularly scheduled monthly meeting of the Board of Aldermen. All applications will be copied and submitted to the Board of Aldermen for consideration. Vacancies shall be filled for the remainder of the unexpired term of the person being replaced.

Membership Requirements

Membership requirements are specific to the particular board or commission as set out in the Town of Waynesville Code of Ordinances and are further detailed herein under the description of the particular board or commission.

Advisory board and commission members are expected to be diligent in the performance of their duties and responsibilities. The Board of Aldermen may dismiss any member who misses three (3) consecutive meetings or one-half of the meetings held in a single six-month period without good cause (such as temporary severe illness of member or family member or overriding but temporary business concerns). Such dismissal may be considered upon report or complaint by the advisory board or commission chairperson, a member of the advisory board or commission, or on the Board of Aldermen's own motion.

Meeting Quorums

A majority of the members of any board or commission are required to be present before an official meeting may be called to order. In the event that a quorum is not present, the advisory board or commission may not act on any item brought before them. Once a quorum has been established, the committee may proceed with its work. Members who find it necessary to withdraw from a meeting prior to adjournment shall be counted as present for purposes of a quorum unless the committee has excused said member by a majority vote. Any member choosing to withdraw from a meeting without first being excused by a vote of the committee shall be counted as present for the purposes of maintaining a quorum and shall be considered to have voted to the affirmative for any motion that is brought before the board or commission.

Officers

Each board and commission shall elect a chair person and a vice-chair person. The election of a secretary is required for those boards and commissions for which the Town does not provide support assistance in the form of a clerk. The election of a secretary is optional for those boards or commissions to which the Town provides staff support. The duties of the chairman of any boards or commissions are set forth herein below. In the absence of a chair person, the vice-chair person assumes the role of the chair and is, at that point in time, vested with the responsibilities of the chair of the board or commission. The duties of the secretary are to insure that proper records are maintained, notices made, and minutes taken for the advisory board on which the secretary may serve. All officers serve one-year terms and are eligible for re-election as to as many terms as the advisory board or commission may deem appropriate.

Rules of Procedure

Each board or commission shall adopt rules of procedure that shall not be inconsistent with any other rules governing their operations as expressed in the Town policies and ordinances or in conflict with State statutes and administrative codes.

C. DUTIES OF THE CHAIR PERSON

Presiding at Meetings

The chair of the board/commission shall preside at meetings if he or she is present, unless he or she becomes actively engaged in debate on a particular matter. The chair may vote in all cases. In order to address the board/commission, a member must be recognized by the chair.

If the chair is absent, the vice-chair person shall preside. If both the chair and vice-chair are absent, another member designated by vote of the board shall preside. The vice-chair or another member who is temporarily presiding retains all his or her rights as a member, including the right to make motions and the right to vote.

If the chair sees a conflict of interest or becomes actively involved in debate on a particular matter, he or she shall designate another board member to preside over the debate. The chair shall resume presiding as soon as action on the matter is concluded.

The presiding officer shall have the following powers:

- To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes;
- To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground;
- To entertain and answer questions of parliamentary law or procedure;
- To call a brief recess at any time; and
- To adjourn in an emergency.

A decision by the presiding officer may be appealed to the board or commission upon motion of any member. Such a motion is in order immediately after a decision by the presiding officer is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

Action by the Board

The board shall proceed by motion made by any member, including the chair. A motion does not require a second and a member may make only one motion at a time. Each motion shall be considered and dealt with one at a time, and a new motion may not be put forth until action on the previous one is concluded. With the exception of special rules applicable only to the Zoning Board of Adjustment, a motion shall be adopted by a majority of the votes cast with a quorum present.

Notification of Absentee Members

It is the duty of the chairperson of each board or commission to be responsible for notifying the Mayor and Board of Aldermen when members of that board or commission have not met the guidelines for faithful attendance. In the event that a member of an advisory board or commission fails to comply with the attendance policies contained herein, it shall be the responsibility of the chair of that advisory board or commission to notify the Mayor and Board of Aldermen, in writing, of the policy violation and to request that said member be replaced.

D. OPEN MEETINGS, PROPER NOTIFICATION AND RECORD KEEPING

All meetings of all advisory boards and commissions as appointed by the Board of Aldermen shall be open to the public and shall be properly publicized. If the board/commission has a designated meeting place, day and time each month, a copy of the regular meeting schedule shall be posted at the Town Hall, the Municipal Building, on the Town of Waynesville website and sent to local media contacts including the Mountaineer and Smoky Mountain News and other standard media outlets by the office of the Town Clerk. Any change or cancellation of a meeting must also be posted and sent to the local media outlets. For those committees that do not have a designated meeting date, place and time, a minimum of 48 hours' notice must be given to the public before a meeting may take place. Said notice

shall contain the date, time, location and purpose of the meeting. If an agenda is developed, the agenda shall be publicized as well. The office of the Town Clerk shall be notified of an impending meeting in sufficient time for the 48 hour notice to be given. No meeting shall be held unless the meeting notice requirements contained herein are met.

The chair of each board/commission shall be responsible for insuring that the proper meeting notices are sent to each member of the respective boards or commissions and to the office of the Town Clerk. That notification may be made either through the secretary of the respective advisory board or commission or through the staff member, if any, who provides the advisory board or commission support. The office of the Town Clerk shall be responsible for public notification of all meetings in accordance with locally adopted procedures and the North Carolina General Statutes.

The chair of each board or commission shall be responsible for insuring that proper rules are adopted for transaction of business and that proper records, including minutes of all proceedings, are kept in accordance with the guidelines specified herein.

E. PROCEDURE FOR TAKING MINUTES

Minutes of a board/commission are the official written record of actions taken by the board/commission. It is the responsibility of the chair, through either the secretary or the clerk, to keep a record of the proceedings of the board/commission. Minutes should be kept in a permanent minute book and are open to public inspection. The minutes provide future generations with the past history of a board/committee. They are used for many types of research and can be consulted for purposes of verification that certain actions were taken, when those actions were taken, and why. It is imperative that the minutes be a clear, concise, informative and accurate record of the proceedings of the meeting.

The minutes must be “full and accurate” (G.S. § 160A-72; G.S. § 143-318.10e) for they are the legal evidence of what the advisory board or commission has said and done. “Full and accurate” does not generally mean, however, that a verbatim transcript of a meeting’s proceedings must be made. Including a detailed record of comments may well be counterproductive and the board or commission may find itself spending an excessive amount of time at its next meeting discussing the details of this record, which could have been omitted altogether. Rather, the minutes must record the results of each vote taken by the board or commission, and they should also show the existence of any condition that is required before a particular action may validly be taken. The full text of each motion should be recorded, including the full text of all ordinances and resolutions passed by the advisory board or commission.

Minutes should include the following essential facts:

1. The name of the board/commission, date, time and place of the meeting.
2. The minutes should state that the meeting was legally convened.

3. Show that a quorum was present at all times during the meeting. The late arrival and the early departure of members (including whether someone leaving was excused by the remaining members) should be noted.
4. The names of the members present and absent.
5. The names of any person addressing the board/commission, a summary of subject matter presented and any action taken as a result of the person's appearance before the board/commission.
6. A record of all motions. A motion must be recorded verbatim, along with the name of the person making the motion and the person seconding the motion (if applicable). The results of each vote must be recorded and upon the request of any member of the board/commission, votes for and against a motion shall be recorded.
7. A record of all ordinances and resolutions introduced (if applicable). Ordinances and resolutions must be recorded verbatim as adopted by the board/commission. Short resolutions and ordinances should be incorporated into the body of the minutes. Lengthy resolutions and ordinances may be attached as an addendum to the minutes.
8. The exact words of each amendment to any motion, order, ordinance or resolution.
9. A record of all subjects before the board/commission and actions taken.
10. Draft copies of advisory board or commission minutes are generally sent by the secretary or the clerk to members several days before the meeting at which they are to be considered for approval. The circulated draft minutes are a public record that must also be available for public inspection. The minutes do not become the official record of the committee's action until it approves them.
11. The advisory board or commission may correct minutes that it has already approved if it later finds that they are incorrect. In such a case, the correction should be noted in the minutes of the meeting at which the correction is made, with an appropriate notation and cross-reference at the place in the minutes book where the provision being corrected appears. Non-substantive corrections, such as those pertaining to grammar or spelling, may be corrected outside of the meeting by way of individual members contacting the secretary or clerk for their particular board or commission.
12. A statement that the meeting adjourned and at what time.
13. Minutes should be signed by their respective chair and clerk, if applicable.
14. The secretary or clerk may ask for assistance from the Town Clerk in publishing the minutes.

15. Under the Open Meetings Law, “full and accurate” minutes must also be kept of the meetings of “public bodies” that are part of municipal government. Included are all city council committees, all boards and commissions of the city that perform either legislative, policy making, quasi-judicial, administrative or advisory functions, and all subcommittees of these other boards and committees. The Board of Aldermen establishes procedures to ensure that the minutes of these various boards are properly recorded and maintained.

The minutes should not include:

1. Any personal opinions or comments (unless meeting is a bona fide Public Hearing).
2. Irrelevant comments or discussion surrounding a topic under discussion or action being taken.

A copy of the minutes, after approval, should be distributed by the secretary or clerk to all members of the respective board/commission and delivered to the office of the Town Clerk either via email or hard copy.

F. ORDER OF BUSINESS

- Call Meeting To Order
- Ascertain quorum present
- Discussion and revision of proposed agenda; adoption of agenda (optional for some boards/commissions)
- Approval of the minutes from the previous meeting
- Old Business
- New Business
- Informal discussion
- Adjourn

Unless the board or commission deems a different “order of business” more appropriate for its work and sets it by policy, or by motion at the start of the meeting.

G. TERMS AND DUTIES OF BOARDS/COMMISSIONS

Each of the Boards or Commissions is listed alphabetically in this manual and relevant enacting legislation and board or commission specific information included behind each tab.

ALCOHOLIC BEVERAGE CONTROL BOARD

Purpose

The Alcoholic Beverage Control (ABC) Board is responsible for the general oversight of the Town of Waynesville operated ABC Store.

Membership

The ABC Board shall consist of three (3) members. Residency requirements are not limited to persons residing within the corporate limits of Waynesville. The North Carolina General Statute 18B-700(a) requires the Board of Aldermen to appoint the Chair of the ABC Board. A copy of the referenced statute is included at the end of this section.

Term

Members appointed to the ABC Board will serve three (3) year terms beginning on July 1 of the year of appointment through June 30 of the third year of the term.

Powers

The ABC Board shall have all of the powers and duties imposed by Sections 18B-701 and 18B-702 of the North Carolina General Statutes. A full copy of the referenced statutes is included at the end of this section.

1. Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
2. Adopt rules for its ABC system, subject to the approval of the Commission;
3. Hire and fire employees for the ABC system;
4. Designate one employee as manager of the ABC system and determine his responsibilities;
5. Require bonds of employees as provided in the rules of the Commission;
6. Operate ABC stores as provided in Article 8;
7. Issue purchase transportation permits as provided in Article 4;
8. Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
9. Borrow money as provided in G.S. 18B 702;
10. Buy and lease real and personal property, and receive property devised or given, as necessary for the operation of the ABC system;

11. Invest surplus funds as provided in G.S. 18B 702;
12. Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
13. Perform any other activity authorized or required by the ABC law.

Duties

1. **Duties.** – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to this Chapter and meet all standards for performance and training established by the Commission pursuant to G.S. 18B 203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal.
2. **Generally.** – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).
3. **Borrowing Money.** – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of this board.
4. **Audits.** – A local board shall submit to the Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the Commission.
5. **Deposits and Investments.** – A local board may deposit monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.
6. **Compliance with Commission Rules.** - The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the

financial operations of local boards which are needed to assure the proper accountability of public funds.

7. **Applicability of Criminal Statutes.** – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.

Meetings

The ABC Board meets on the Third Tuesday of each month at 10:00 a.m. at the ABC Board Office located at 52 Dayco Drive in Waynesville. All meetings of the ABC Board are open to the public.

Compensation

Members of the ABC Board shall serve at the rate of compensation established by the Board of Aldermen. At the time of this publication, compensation is as follows: Board Chairman \$350.00 per month or \$4,200 annually; Board Member \$250.00 per month or \$3,000 annually.

Reporting

The ABC Board shall provide a comprehensive report to the Board of Aldermen in October each year.

Town Specific Information and Enabling Legislation Related to the ABC Board

(Copies included at the end of this section)

May 9, 1967

Resolution requesting introduction of legislation to allow for a municipal election for the purpose of determining whether or not an Alcoholic Beverage Control board and Alcoholic Beverage Control stores shall be established in the corporate limits of the Town of Waynesville; as well as the establishment of the schedule of proceeds from sales.

May 29, 1967

Resolution calling for a special election on July 25, 1967 for the purpose of determining whether or not a Town Liquor Control Store may be operated in the Town of Waynesville.

May 29, 1967

Resolution noting the special election on July 25, 1967 and the opening of the election books from July 7, 1967 through July 14, 1967 and that the challenge day shall be July 15, 1967.

August 9, 1967

Special meeting to canvass election returns was held. A copy of the election results was reviewed and approved by the Board of Aldermen. **Note the election was held on August 8, 1967 rather than July 25, 1967.

August 14, 1967

Special meeting held to appoint the initial ABC Board for the Town of Waynesville.

BOARD OF ADJUSTMENT (Zoning Board of Adjustment)

Purpose

The Board of Adjustment (Waynesville Board of Adjustment) is established as a “quasi-judicial” administrative board that operates on a level between the enforcement officials of the Town of Waynesville and the Courts. The purpose of the Zoning Board of Adjustment is to hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with enforcement of an ordinance adopted pursuant to the Land Development Standards Section 14.4 through 14.4.2 adopted by the Town of Waynesville and in accordance with North Carolina General Statute 160A-388. A copy of the referenced statute and ordinance are included at the end of this section.

Membership

The membership of the Waynesville Board of Adjustment shall consist of five (5) members with a minimum of three (3) alternates. The majority of the membership shall reside within the corporate limits of the Town of Waynesville. In accordance with North Carolina General Statute 160A-32, the Haywood County Commissioners will appoint one (1) or more members to provide for proportional representation of residents within the extraterritorial jurisdiction (ETJ) of the Town of Waynesville.

Term

Members appointed to the Waynesville Board of Adjustment shall serve three (3) year terms beginning on July 1 of the year of appointment through June 30 of the third year of the term.

Powers, Duties and Functions

The Waynesville Board of Adjustment shall have the following powers and duties to be carried out in accordance with North Carolina General Statute 160A-388 and with the terms of the Land Development Standards set forth by the Town of Waynesville.

1. Hear and decide appeals from any order, requirement, permit, decision or determination issued by an administrative officer of the Town of Waynesville in enforcing any provision of the Town of Waynesville Minimum Housing Codes.
2. Land Development Standards – the Waynesville Board of Adjustment shall render final decisions regarding the following types of permit types:
 - a. Appeal of any administrative decisions
 - b. Appeals of Planning Board decisions regarding Subdivision (major) – Preliminary Plats
 - c. Appeals of Historic Preservation Commission decision regarding Certificates of Appropriateness (major)
 - d. Variances

Decisions of the Waynesville Board of Adjustment

The concurring vote of four (4) members of the Waynesville Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator or to decide in favor of the applicant on any matter upon which it is required to or to effect any variation of the Zoning Ordinance. On all appeals, applications and matters brought before the Waynesville Board of Adjustment, the Board shall inform, in writing the applicant of its decision.

Meetings

Meetings of the Waynesville Board of Adjustment are held on the First Tuesday of each month at 5:30 p.m. at the Town Hall at 9 South Main Street.

Reporting

The Waynesville Board of Adjustment shall provide a comprehensive report to the Board of Aldermen in April each year.

Compensation

Members of the Waynesville Board of Adjustment shall serve without compensation except that they will be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Waynesville Board of Adjustment.

Town Specific Information and Enabling Legislation Related to the Waynesville Board of Adjustment

(Copies included at the end of this section)

November 13, 1958 – Initial appointment of Zoning and Planning Board which became Waynesville Board of Adjustment

COMMUNITY ACTION FORUM

Purpose

The purpose of the Community Action Forum is to provide a manner for feedback directly to the Police Department related to public safety and to work in conjunction with the Community Oriented Policing Services.

Membership

The Community Action Forum shall have fifteen (15) members. Six (6) members are appointed by the Board of Aldermen and Town Manager; four (4) members are appointed by the Police Department and should represent balance and diversity from different areas in the Town; and one (1) appointment each by the Downtown Waynesville Association, Frog Level Merchants' Association, Hazelwood Merchants' Association, Junaluska Assembly Community Council and the Pigeon Community Center Board of Directors.

Term

Members of the Community Action Forum shall serve shall serve three (3) year terms beginning on July 1 of the year of appointment through June 30 of the second year of the term.

Powers, Duties and Functions

The Community Action Forum will work in conjunction with the Community Oriented Policing Services program to:

1. Place emphasis on improving the communication and training of various agencies involved in addressing public safety concerns
2. Educate the citizens of Waynesville regarding potential safety issues and provide information in various formats
3. Take direction from the Police Department regarding community outreach and services available in an effort to fully inform and educate citizens and visitors to Waynesville

Meetings

The Community Action Forum will meet quarterly on a date to be announced at 5:30 p.m. in the Police Training Room at 9 South Main Street.

Reporting

The Community Action Forum shall provide a comprehensive report to the Board of Aldermen in February each year.

Compensation

Members of the Community Action Forum shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Community Action Forum.

Town Specific Information and Enabling Legislation Related to the Community Action Forum
(Copies included at the end of this section)

January 29, 2010 – The Community Action Forum first mentioned at Board Retreat as a requirement for the COPS Grant

February 15, 2010 – The Community Action Forum explained at Regular Session of the Board of Aldermen

FIREFIGHTERS' RELIEF FUND BOARD

Purpose

The purpose of the Firefighters' Relief Fund Board is to control the local firefighters' relief funds in accordance with North Carolina General Statute 58-84. A copy of the statute is included at the end of this section.

Membership

The Firefighters' Relief Fund Board shall consist of five (5) members. Two (2) of the members will be appointed by the Town of Waynesville and must be a resident of the fire district; two (2) members will be appointed by the Waynesville Firemen's Association and must be a resident of the fire district or an active or retired member of the Waynesville Fire Department; and one (1) member will be appointed by the North Carolina Insurance Commissioner and must be a resident of the fire district or an active or retired member of the Waynesville Fire Department.

Term

Members of the Firefighters' Relief Fund Board shall serve shall serve two (2) year terms beginning on January 1 of the year of appointment through December 31 of the second year of the term.

Powers, Duties and Functions

The Firefighters' Relief Fund Board is responsible for the distribution of funds to recipients. Annual requirements related to eligibility for receipt of funding must be met including:

1. A rated fire department must be a member of the State Firemen's Association;
2. A financial report of the local Firefighters' Relief Fund receipts, disbursements, and remaining balance must be submitted to the State Firemen's Association; (the State Firemen's Association mails the Financial Statement directly to the fire department each June)
3. A Report of Fire Conditions Form, which provides the names of the local Firefighters' Relief Fund board, must be submitted to the Insurance Commissioner; (the Department of Insurance mails the Report of Fire Conditions to the Clerks each August 15) and
4. All General Statute requirements must be met by October 31 of each year.
5. Funds may be used to provide for benefits of supplemental retirement, workers compensation, and other insurance and pension protection for firemen; to provide for educational benefits to firemen and their dependents who otherwise qualify for benefits from the Firefighters' Relief Fund; or to provide assistance to a destitute member fireman who has served honorably for at least five years. The Firefighters' Relief Fund Board is responsible for verification of information and eligibility of those requesting funding.

Meetings

The Firefighters' Relief Fund Board meets on an as needed basis, but at least annually.

Reporting

The Firefighters' Relief Fund Board shall provide a comprehensive report to the Board of Aldermen in January each year.

Compensation

Members of the Firefighters' Relief Fund Board shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Firefighters' Relief Fund Board.

Enabling Legislation Related to the Firefighters' Relief Fund Board

(Copies included at the end of this section)

HISTORIC PRESERVATION COMMISSION

Purpose

The Waynesville Historic Preservation Commission was created for the purpose of designating historic districts and landmarks within the Town of Waynesville. In addition, the Historic Preservation Commission (HPC) shall develop and recommend to the Board of Aldermen rules and regulations governing the designation and maintenance of historic properties in the Town.

Membership

The Historic Preservation Commission shall consist of nine (9) members all of whom shall reside within the planning and zoning jurisdiction of Waynesville. A majority of members of the Commission shall have demonstrated special interest, experience or education in history, architecture, archeology or related fields.

Term

Members appointed to the Historic Preservation Commission will serve three (3) year terms beginning on July 1 of the year of appointment through June 30 of the third year of the term.

Powers, Duties and Functions

The Historic Preservation Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in The Town of Waynesville Ordinance Number 4-95 (Code of Ordinances Section 154) and Part 3C, Article 19 of Chapter 160A of the General Statutes of the State of North Carolina. A full copy of the Ordinance and General Statutes are included at the end of this section.

1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;
2. Recommend to the Board of Aldermen areas to be designated by ordinance as "Historic Districts"; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks";
3. Recommend to the Board of Aldermen that designation of any area as a historic district, or part thereof, or designation of any building, structure, site, area or object as a landmark be revoked or removed for cause;
4. Review and act upon proposals for alterations, demolition or new construction within historic districts, or the alteration or demolition of designated landmarks;
5. Conduct an educational program with respect to historic properties and districts within its jurisdiction;
6. Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission when authorized by the governing board may

contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law;

7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;
8. Prepare and recommend the official adoption of a preservation element as part of the Town of Waynesville's comprehensive plan;
9. The Commission may recommend to the Board of Aldermen the acquisition by any lawful means the fee or any lesser included interest, including options to purchase, of properties within established districts or of any such properties designated as landmarks. The Commission may recommend to the Board of Aldermen to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of the public access and promote the preservation of the property;
10. Recommend the restoration, preservation and operation of historic properties; and
11. Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary and authorized by the Board of Aldermen.
12. Adopt and publish rules of procedure governing its meeting and the conduct of official business and bylaws governing the appointment of members, terms of office, the election of officers and related matters.
13. Prepare and adopt principles and guidelines for altering, restoring, moving or demolishing properties designated as landmarks or within historic districts.

Meetings:

The Historic Preservation Commission shall meet on the First Wednesday of each month at 2:00 p.m. at the Town Hall in Waynesville.

Compensation:

Members of the Historic Preservation Commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of funding available to the Commission.

Reporting

The Historic Preservation Commission shall provide a comprehensive report to the Board of Aldermen in March each year.

Town Specific Information and Enabling Legislation Related to the Historic Preservation Commission
(Copies included at the end of this section)

January 24, 1995

The Ordinance Creating the Historic Preservation Commission of Waynesville is adopted.

March 12, 1996

An amendment to the Ordinance is made increasing the membership to seven (7) members with one member residing in the area formerly known as the Town of Hazelwood.

PLANNING BOARD

Purpose

The Planning Board is established to advise the Board of Aldermen on matters related to land use and community development. The Planning Board shall be governed by the terms of North Carolina General Statute 160A-360 through 160A-387 and by the terms of the Town of Waynesville's Land Development Standards and Code of Ordinances Section 14.3 through 14.3.2. A full copy of the General Statutes and Ordinance referenced is included at the end of this section.

Membership

The Planning Board shall consist of nine (9) members. Seven (7) of the members must reside within the corporate limits of the Town of Waynesville, the remaining two (2) members must reside in the one-mile extraterritorial jurisdiction (ETJ) of the Town of Waynesville. Members in the ETJ will be appointed by the County Commissioners.

Term

Members appointed to the Planning Board shall serve three (3) year terms beginning on July 1 of the year of appointment through June 30 of the third year of the term.

Powers, Duties and Function

The Planning Board shall be governed by the terms of North Carolina General Statute 160A-360 through 160A-387 and by the terms of the Town of Waynesville's Land Development Standards and Code of Ordinances Section 14.3 through 14.3.2.

1. Perform studies and surveys of the present conditions and probable future development of the town and its environs, including but not limited to, studies and surveys of land uses, population, traffic, parking, expansions of extraterritorial jurisdiction, etc.
2. Formulate and recommend to the Board of Aldermen the adoption and amendment of a Land Development Plan and other plans as necessary.
3. Conduct annexation feasibility studies and recommend suitable areas of annexation to the Board of Aldermen
4. Review Land Development Standards (LDS) – the Planning Board shall review and make recommendations regarding the following permit types:
 - a. Text Amendments
 - b. Map Amendments/Rezoning
 - c. Conditional District
 - d. Vested Right
5. Land Development Standards Decisions – the Planning Board shall render final decisions regarding the following permit types
 - a. Site Plans/Design Review
 - b. Subdivision (Major) – Preliminary Plat
 - c. Special Use Permits

6. The Planning Board shall also have any additional powers and duties as may be set forth for in other laws and regulations or at the direction of the Board of Aldermen.
7. Promote public interest in and an understanding of its recommendations, and to that end may publish and distribute copies of its recommendations and may employ other means of publicity and education where appropriate.

Meetings

The Planning Board meets on the Third Monday of each month at 5:30 p.m. at the Town Hall located at 9 South Main Street.

Reporting

The Planning Board shall provide a comprehensive report to the Board of Aldermen in August each year.

Compensation

Members of the Planning Board shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Planning Board.

Town Specific Information and Enabling Legislation Related to the Planning Board (Copies included at the end of this section)

RECREATION AND PARKS ADVISORY COMMISSION

Purpose

The Recreation and Parks Advisory Commission provides guidance and advises the Board of Aldermen on proposed and existing recreation programs and public recreational opportunities.

Membership

The Recreation and Parks Advisory Commission shall consist of nine (9) members. A minimum of two-thirds of the membership shall be made up of full-time residents within the corporate limits of the Town of Waynesville. The remaining one-third of the membership may be made up of those residents who do not reside within the corporate limits of the Town of Waynesville.

Term

Members appointed to the Recreation and Parks Advisory Commission shall serve three (3) year terms beginning on July 1 of the year of appointment through June 30 of the third year of the term.

Powers, Duties and Functions

The Recreation and Parks Advisory Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined by the Resolution Creating the Recreation and Parks Advisory Commission.

1. Serve as the Recreation and Parks advisory body to the Board of Aldermen for the Town of Waynesville.
2. Assist the staff of the Recreation and Parks department to develop rules, regulations and procedures governing the operation and conduct of the recreation facilities for presentation to the Board of Aldermen.
3. Recommend policies to the Recreation Director and Board of Aldermen within the scope of responsibilities as outlined in the Resolution to Amend Recreation and Parks Advisory Commission and in conjunction with all Town Ordinances.
4. Develop and maintain an overall Recreation and Parks Master Plan for the Town of Waynesville, to include the following: proposed location greenway and park sites and types of recreation activities and/or facilities.
5. Participate in the preparation of any special plans or studies authorized by the Board of Aldermen having a bearing on Recreation and Parks issues pertinent to or affecting the Town of Waynesville.
6. Assist with the furthering of recreational programs, including understanding and education of the general citizenry and participants.
7. Stimulating public involvement in decision-making related to recreational programming and offerings

8. Work in conjunction with the Haywood County Recreation and Parks Advisory Board and department to ensure that recreational programming is offered county-wide and that the general population is being served.

Meetings

Meetings of the Recreation and Parks Advisory Commission are held on the Third Tuesday of each month at 5:30 p.m. at the Recreation Center Office at 550 Vance Street.

Reporting

The Recreation and Parks Advisory Commission shall provide a comprehensive report to the Board of Aldermen in November each year.

Compensation

Members of the Recreation Commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Recreation and Parks Advisory Commission.

Town Specific Information and Enabling Legislation Related to the Recreation and Parks Advisory Commission

(Copies included at the end of this section)

March 11, 1969 – the initial Recreation and Parks Advisory Commission members appointed

August 11, 1992 – Resolution Amending the Recreation and Parks Advisory Commission Composition

October 8, 1996 – Resolution Amending the Recreation and Parks Advisory Commission membership to five (5) members

March 24, 1997 – Resolution Amending the Recreation and Parks Advisory Commission membership to seven (7) members

October 10, 2006 – Resolution Amending the Recreation and Parks Advisory Commission membership to nine (9) members

WAYNESVILLE HOUSING AUTHORITY

Purpose

The Waynesville Housing Authority is formed to promote and preserve a variety of housing choices for the citizens of Waynesville and to increase public awareness of housing opportunities, needs and concerns.

Membership

The Waynesville Housing Authority shall consist of six (6) members. One member must be directly assisted by the Waynesville Housing Authority. Residency requirements are limited to persons residing within the corporate limits of Waynesville.

Term

Members appointed to the Waynesville Housing Authority will serve five (5) year terms beginning on July 1 of the year of appointment through June 30 of the fifth year of the term.

Powers, Duties and Functions

The Waynesville Housing Authority is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in North Carolina General Statute 157-9. A full copy of the General Statute is included at the end of this section.

Duties and Responsibilities include but are not limited to:

1. Survey and study the housing situation in the Town of Waynesville.
2. Help develop and preserve housing stock by rehabilitation of older houses and development of new housing for middle and lower income citizens.
3. Search and apply for available funding sources and enlist partner agencies to increase housing opportunities.
4. Involve citizens in support of improved housing.
5. Educate the public about housing problems and opportunities.
6. Identify and analyze obstacles to affirmatively further fair housing in the Town of Waynesville.
7. Search, apply for and recommend acceptance by the Board of Aldermen any appropriate grant, gift, bequest or donation of property.
8. Promote public interest in and an understanding of its recommendations both externally and in Town of Waynesville processes and employ other means of publicity and education, when possible.

Meetings

The Waynesville Housing Authority meets on the First Wednesday of each month at 5:30 p.m. at the Waynesville Towers located at 65 Church Street.

Reporting

The Waynesville Housing Authority shall provide a comprehensive report to the Board of Aldermen in May each year.

Compensation

Members of the Waynesville Housing Authority shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Waynesville Housing Authority.

Enabling Legislation Related to the Waynesville Housing Authority

(Copies included at the end of this section)

WAYNESVILLE PUBLIC ART COMMISSION

Purpose

The Public Art Commission shall serve as an advisory commission to the Board of Aldermen making recommendations regarding guidelines and procedures for planning, development, acquisition, display and maintenance of public art.

Membership

The Public Art Commission shall consist of nine (9) members. One-third of members will be nominated by the Town of Waynesville; one-third of members will be nominated by the Downtown Waynesville Association and the remaining one-third to be nominated by the Haywood County Arts Council.

Term

Members appointed to the Public Art Commission shall serve four (4) year terms beginning on July 1 of the year of appointment through June 30 of the fourth year of the term.

Powers, Duties and Functions

1. Recommend guidelines and procedures for the planning, development, acquisition, display and maintenance of Public Art, which interprets the cultural, historical, natural and human resources of the Waynesville community and surrounding region.
2. Recommend guidelines and procedures for the establishment of a Public Art Fund administered by the Town of Waynesville. This includes funds from Town appropriations and all funds donated to the Town by private or other sources, such as through public and private grant programs. The fund shall be used for the selection, commissioning, acquisition, installation, maintenance, administration and insurance of works of art as well as for publicity and education pertaining to public art.
3. Recommend procedures and guidelines for the acceptance of gifts of money and art to the Town Board of Aldermen and acknowledge the gift to the donor and make recommendations to the Board for appropriate recognition.
4. Recommend expenditures from the Public Art Fund for approval by the Board of Aldermen, for the following:
 - a. Acquisition of artwork through commission or purchase
 - b. Direct costs incurred in the relocation or conservation of an artwork owned by the Town
 - c. Site preparation
 - d. Collection management
 - e. Program and project planning
 - f. Artist and artwork selection-related expenses, including proposal honoraria
5. Recommend guidelines and procedures for the acquisition of artwork, selection of artists and management of projects.

6. Coordinate with the Town Attorney and Town Purchasing Agent to expedite the artist's contract or donated artwork for approval by the Board of Aldermen.
7. Provide background information about the inspiration and display of public artworks through appropriate signage, brochures and digital media.
8. Provide opportunities for the community to participate in the public art process.
9. Inventory Public Art annually to ensure that the conditions and standards of Public Art are being met and report their condition to the Director of Public Services, including recommendations for maintenance, repair or reacquisition, when appropriate.
10. Encourage pedestrian activity through human-scale public art placements where appropriate.
11. Provide for the incorporation of public art in public buildings, parks, building facades, entry corridors, transportation projects and other forms where appropriate.
12. Provide coordination with the Downtown Waynesville Association, Haywood County Arts Council, Waynesville Historical Commission, Waynesville Appearance Commission and other organizations interested in public art.
13. Provide an educational program explaining the role and function of public art and its relationship to the unique cultural and environmental heritage of the Town of Waynesville and surrounding region.

Meetings

The Public Art Commission meets on the Second Thursday of each month at 4:00 p.m. at the Town Hall at 9 South Main Street.

Reporting

The Public Art Commission shall provide a comprehensive report to the Board of Aldermen in September each year.

Compensation

Members of the Public Art Commission shall serve without compensation except that they may be reimbursed for actual expenses incident to the performance of their duties within the limits of any funds available to the Public Art Commission.

Town Specific Information and Enabling Legislation Related to the Public Art Commission

(Copies included at the end of this section)

January 24, 2006 – Ordinance number 4-06 – Creation of Waynesville Public Art Commission is approved

ARTICLE IV.

BOARDS, COMMISSIONS AND COMMITTEES*

* **Cross References:** Firemen's relief board, § 30-101 et seq.; community appearance commission, § 62-71 et seq.
State Law References: Authority to create or abolish boards and commissions, G.S. 160A-146.

DIVISION 1.

GENERALLY

~~Secs. 2-126--2-145. Reserved.~~

Sec. 2-126 – Membership (Number of Members)

The number of members for the various Boards, Commissions and Committees appointed by the Board of Aldermen may from time to time be updated. The number of members for each Board, Commission or Committee will be indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which is maintained by the Town Clerk. Revisions to the number of members on the various Boards, Commissions and Committees shall not require the update of the Code of Ordinances unless required by Federal, State or Local legislation. This does not apply to the membership requirements related to residency, professional status or other requisite qualification, only to the number of members on the Board, Commission or Committee.

Sec. 2-127 - Meetings

Board, Commissions and Committee meetings shall be held on the date, time and frequency as referenced in the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. Changes in meeting dates, times or frequency will be based on actions by individual Boards, Commissions and Committees and reported to the Board of Aldermen. Changes to the meeting date, time or frequency shall not require the update of the Code of Ordinances unless required by Federal, State or Local legislation.

Sec. 2-128 - Conduct of Meetings

All Boards, Commissions and Committees will conduct meetings in accordance with North Carolina General Statute § 143-318.10.

DIVISION 2.

ALCOHOLIC BEVERAGE CONTROL BOARD*

* **State Law References:** Local alcoholic beverage control boards, G.S. 18B-700 et seq.

Sec. 2-146. Establishment; members.

- (a) There is established an alcoholic beverage control board for the town.
- (b) The alcoholic beverage control board shall consist of the number of three members referenced

and indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum of members shall be necessary to transact business.

Members are appointed for three-year terms. The initial members of the alcoholic beverage control board shall serve staggered terms, thereafter their successors shall each be appointed for three-year terms. The board of aldermen shall designate one member of the alcoholic beverage control board as chairperson.

(c) Members of the alcoholic beverage control board shall be appointed by the board of aldermen.

(d) The board of aldermen shall appoint members of the alcoholic beverage control board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability and good moral character.

(e) A vacancy on the alcoholic beverage control board shall be filled by the board of aldermen for the remainder of the unexpired term. If the chairman's seat becomes vacant, the board of aldermen may designate either the new member or an existing member of the alcoholic beverage control board to complete the chairman's term.

(f) A member of the alcoholic beverage control board may be removed for cause at any time by the board of aldermen. Alcoholic beverage control board members are subject to the removal provisions of G.S. 18B-202.

(g) An alcoholic beverage control board member may be compensated as determined by the board of aldermen.

(h) The provisions of G.S. 18B-201 shall apply to alcoholic beverage control board members and employees.

(i) Each alcoholic beverage control board member shall be bonded in an amount not less than \$5,000.00, secured by a corporate surety, for the faithful performance of his duties. A public employee's blanket position bond in the required amount satisfies the requirements of this division. The bond shall be payable to the alcoholic beverage control board and shall be approved by the board of aldermen for the alcoholic beverage control board. The board of aldermen may exempt from this bond requirement any board member who does not handle board funds, and it may also increase the amount of the bond for any member who does handle board funds.

(j) Meetings shall be held on the date and time as referenced in the Town of Waynesville Boards and Commissions Manual and may from time to time be updated or amended.
~~(Code 1987, §§ 32.001, 32.010)~~

Secs. 2-147--2-165. Reserved.

DIVISION 3.

RECREATION AND PARKS ADVISORY COMMISSION*

* **Cross References:** Parks and recreation department, § 2-271 et seq.

Sec. 2-166. Establishment.

There shall be a recreation and parks advisory commission established under rules and regulations adopted by the board of aldermen. The Recreation and Parks Advisory Commission shall consist of the number of members referenced and indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum of the members shall be necessary to transact business.

(Code 1987, § 32.100)

Secs. 2-167--2-190. Reserved.

DIVISION 4.

HOUSING AUTHORITY*

* **Cross References:** Housing, ch. 38.
State Law References: Housing Authorities Law, G.S. 157-1 et seq.

Sec. 2-191. Establishment.

There shall be a housing authority consisting of not less than five nor more than nine commissioners appointed by the mayor. The Waynesville Housing Authority shall consist of the number of members referenced and indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum of members shall be necessary to transact business.

(Code 1987, § 32.060)

Secs. 2-192--2-225. Reserved.

14 Administrative Agencies

14.1 The Administrator

The various provisions of this ordinance shall be administered under the general direction of the Town Manager and under the specific direction of the Town of Waynesville ~~Planning Development Services, Public Services and Utility Departments Department and the Town of Waynesville Public Works Department~~. For the purposes of this ordinance, the ~~Planning Director and Public Works Director~~ directors of these departments and their subordinate staffs are collectively referred to as the Administrator. The Planning Development Services Department will serve as the “gatekeeper” for all development applications and will advise applicants on appropriate personnel to contact.

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14.1.1 Duties and Responsibilities

The Administrator shall have the following powers and duties, to be carried out in accordance with the terms of this ordinance:

- A. To maintain a record of all permits and approvals on file and to make available copies to interested parties.
- B. To review all applications for land development for compliance with the terms of this ordinance.
- C. To provide the Waynesville Board of Aldermen, the Waynesville Planning Board, the Board of Adjustment of Waynesville, and the Historic Preservation Commission of Waynesville with reports and recommendations regarding matters before these bodies, either as required by this ordinance, other laws or regulations or at the request of the body.
- D. To enforce compliance with the terms of this ordinance, unless otherwise specified.
- E. To administer the floodplain management program for the town.
- F. To administer the stormwater management program for the town.
- G. To administer the sedimentation and erosion control program for the town.
- H. To issue driveway access permits.
- I. To review all development plans for compliance with street and utility requirements of the Town of Waynesville.
- J. Such additional powers and duties as may be set forth for the Administrator elsewhere in this ordinance and other laws and regulations of the town.

14.2 Board of Alderman

14.2.1 Powers and Duties

The Town of Waynesville's Board of Alderman shall have the following powers and duties to be carried out in accordance with the terms of this ordinance.

- A. To conduct any and all business in accordance with their Charter and North Carolina General Statutes.
- B. To amend the Land Development Plan and other plans as necessary.
- C. LDS Decisions: The Board of Alderman shall render final decisions regarding the following permits types (see also Chapter 15):
 1. Designation of Historic Landmarks/Districts (15.11.1)

2. Text Amendments (15.14)
3. Map Amendments/Rezoning (15.14)
4. Conditional District (15.15)
5. Vested Right (15.16)

14.3 Planning Board

14.3.1 Powers and Duties

The Town of Waynesville's Planning Board shall have the following powers and duties to be carried out in accordance with the terms of this ordinance.

- A. To perform studies and surveys of the present conditions and probable future development of the town and its environs, including but not limited to, studies and surveys of land uses, population, traffic, parking, expansions of extraterritorial jurisdiction, etc.
- B. To formulate and recommend to the Board of Aldermen the adoption and amendment of a Land Development Plan and other plans as necessary.
- C. To conduct annexation feasibility studies and recommend suitable areas of annexation to the Board of Aldermen.
- D. LDS Review: The Planning Board shall review and make recommendations regarding the following permits types (see also Chapter 15):
 1. Text Amendments (15.14)
 2. Map Amendments/Rezoning (15.14)
 3. Conditional District (15.15)
 4. Vested Right (15.16)
- E. LDS Decisions: The Planning shall render final decisions regarding the following permits types (see also Chapter 15):
 1. Site Plans/Design Review (Major) (15.8.2)
 2. Subdivision (Major) – Preliminary Plat (15.9.2)
 3. Special Use Permits (15.11.1)
- D. The Planning Board shall also have any additional powers and duties as may be set forth for in other laws and regulations or at the direction of the Board of Alderman.

14.3.2 Membership and Quorum

- A. The Planning Board shall consist of ~~nine (9)~~ the number of members referenced and indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum, consisting of a simple majority of ~~five (5)~~ members shall be necessary to transact business.
- B. The Waynesville Board of Aldermen shall appoint members from within the Town limits and, if the Town is exercising Extraterritorial Jurisdiction, one (1) or more members shall be appointed by the Haywood County Commissioners as set forth in NCGS 160A-32 to provide for proportional representation of residents within the Extraterritorial Jurisdiction. As vacancies occur the Administrator shall advise the appropriate governing board to make appointments or reappointments as necessary to maintain this proportional representation based on best available estimates of current population of the Town and the Extraterritorial Jurisdiction. The representatives

of the Extraterritorial Jurisdiction shall have equal rights, privileges and duties with the other members of the Planning Board.

- C. All members shall serve three (3) year terms and may succeed themselves.
- D. Officers shall be elected in accordance with the adopted rules of procedure.
- ~~D.E.~~ Meetings shall be held on the date and time as referenced in the Town of Waynesville Boards and Commission Manual and may from time to time be updated or amended.

14.4 Board of Adjustment

14.4.1 Powers and Duties

The Board of Adjustment of Waynesville shall have the following powers and duties to be carried out in accordance with the terms of this ordinance:

- A. To hear and decide appeals from any order, requirement, permit, decision or determination issued by an administrative officer of the town in enforcing any provision of the Town of Waynesville Minimum Housing Codes.
- B. LDS Decisions: The Board of Adjustment shall render final decisions regarding the following permits types (see also Chapter 15):
 1. Appeal of any Administrative decisions (15.6-7, 15.8.1, 15.9.1,3, 15.12)
 2. Appeals of Planning Board Decision regarding Subdivision (Major) – Preliminary Plats (15.11.1)
 3. Appeals of Historic Preservation Commission Decision regarding Certificate of Appropriateness (Major) (15.11.3)
 4. Variances (15.13)
- C. The Board of Adjustment shall also have any additional powers and duties as may be set forth for in other laws and regulations or at the direction of the Board of Alderman.

14.4.2 Membership and Quorum

- A. The Waynesville Board of Adjustment shall consist of ~~five (5)~~the number of members referenced and indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum of ~~four (4)~~four fifths (4/5) of the membership shall be necessary to transact business.
- B. The Board shall not pass upon any question relating to an appeal from a decision, order, requirement or determination of town officials or an application for a variance or conditional use permit when there are less than four-fifths (4/5) of the board members with jurisdictional authority present.
- C. The Waynesville Board of Aldermen shall appoint members from within the Town limits and, if the Town is exercising Extraterritorial Jurisdiction, one (1) or more members shall be appointed by the Haywood County Commissioners as set forth in NCGS 160A-32 to provide for proportional representation of residents within the Extraterritorial Jurisdiction. As vacancies occur the Administrator shall advise the appropriate governing board to make appointments

or reappointments as necessary to maintain this proportional representation based on best available estimates of current population of the Town and the Extraterritorial Jurisdiction. The representatives of the Extraterritorial Jurisdiction shall have equal rights, privileges and duties with the other members of the Board of Adjustment.

- D. All members shall serve three (3) year terms and may succeed themselves.
- E. Officers shall be elected in accordance with the adopted rules of procedure.
- E.F. Meetings shall be held on the date and time as referenced in the Town of Waynesville Boards and Commission Manual and may from time to time be updated or amended.

14.5 Historic Preservation Commission

14.5.1 Powers and Duties

The Historic Preservation Commission of Waynesville shall have the following powers and duties to be carried out in accordance with the terms of this ordinance and GS §160A, Article 19 Part 3C:

- A. To undertake and inventory of properties of historical, prehistorical, archaeological, architectural and/or cultural significance.
- B. To conduct an educational program with respect to historic districts and landmarks within its jurisdiction.
- C. To cooperate with the state, federal and local government in pursuance of the purposes of the tasks assigned to them; to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest. The Board of Aldermen, or the commission, when authorized by the Board of Aldermen, may contract with the state or the United States, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.
- D. To enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- E. To prepare and recommend the official adoption of a preservation element as part of the town's Land Development Plan.
- F. To recommend to the Board of Aldermen the acquisition by any lawful means of the fee or any lesser interest, including options to purchase, of properties within established districts or of any such properties designated as landmarks. The commission may recommend to the board to hold, manage, preserve, restore and improve the same, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions which will secure appropriate rights of public access and promote the preservation of the property.
- G. To recommend the restoration, preservation and operation of historic properties.

- H. To negotiate at any time with the owner of a building, structure, site, area or object for its acquisition or its preservation, when such action is reasonably necessary and is authorized by the Board of Aldermen.
- I. LDS Review: The Planning Board shall review and make recommendations regarding the following permits types (see also Chapter 15):
 - 1. Designation of Historic Landmarks/Districts (15.11.1)
- J. LDS Decisions: The Historic Preservation Commission shall render final decisions regarding the following permits types (see also Chapter 15):
 - 1. To Hear Appeals of Administrative Decisions regarding Certificates of Appropriateness (Minor) (15.11.2)
 - 2. Certificates of Appropriateness (Major) (15.11.3)
- K. The Historic Preservation Commission shall also have any additional powers and duties as may be set forth for in other laws and regulations or at the direction of the Board of Alderman.

14.5.2 Membership and Quorum

- A. The Waynesville Historic Preservation Commission shall consist of the number of seven (7) members referenced in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum, consisting of a simple majority of the four (4) one more than half of the members hip shall be necessary to transact business.
- B. The Waynesville Board of Aldermen shall appoint all members. Vacancies shall be filled by the Waynesville Board of Aldermen as they occur.
- C. All members shall serve three (3) year terms and may succeed themselves.
- D. Officers shall be elected in accordance with the adopted rules of procedure.
- E. Meetings shall be held on the date and time as referenced in the Town of Waynesville Boards and Commission Manual and may from time to time be updated or amended.

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14.6 Meetings and General Procedures

14.6.1 All Meetings to be Open

All meetings of bodies under this ordinance shall be open to the public in accordance with G.S. 143-318 (Meetings of Public Bodies) and shall be conducted in accordance with the procedures set forth in these regulations and rules of procedure adopted by the respective bodies and approved by the Board of Alderman.

14.6.2 Rules of Procedure

All Boards shall adopt formal rules of procedure consistent with the level of decision-making vested with that board/commission (e.g., advisory review, quasi-judicial). Any adopted rules of procedure shall be kept on file at the Planning Department and shall be made available to the public.

14.6.3 Minutes

Accurate minutes of each meeting shall be maintained, showing the vote of each member on each question, or if absent or failing to vote, indicating such fact, and it shall keep records of its examinations and official actions, all of which shall be filed in the office of the Administrator for the public record.

14.6.4 Meetings

- A.** All bodies authorized under this ordinance shall meet at regularly scheduled times and at such other times as determined by the chairman as provided for in the rules of procedure.
- B.** Special meetings may be called at any time by the chairperson or by request of a majority of members of the board.

14.6.5 Staff

The Administrator or their designee shall serve as staff to the various boards and commissions as outlined in this chapter. In addition, the Town Attorney may provide legal and procedural assistance when requested.

14.6.6 Attendance Policy

All members shall attend board/commission meetings on a regular basis. If any member misses more than three (3) consecutive meetings, or does not attend at least 75% of the meetings in one calendar year, he/she may be replaced at the discretion of the Board of Alderman.



TOWN OF WAYNESVILLE, NORTH CAROLINA

Public Art Commission Rules & Regulations

Effective Date: May 14, 2013

Supersedes: Ordinance 4-06

Revision # 2

Town Clerk (828) 452-2491

(Note: Changes from Ordinance 04-06 are indicated below by highlighting and strikethroughs)

1. Definition of Public Art.

Public Art shall be defined as any work of art or design element created by artists or craftsmen and sited in a public space for the public to experience. Public Art does not include the performing arts.

2. Composition.

The Public Art Commission shall consist of the number of members referenced and indicated in the most current version of the Town of Waynesville Boards and Commissions Manual which may from time to time be updated or amended. A quorum, consisting of a simple majority of five (5) members shall be necessary to transact business. The commission shall consist of nine members appointed by the Town of Waynesville Board of Aldermen, ~~one third each nominated by the Town of Waynesville, the Downtown Waynesville Association and the Haywood County Arts Council.~~ The commission members shall be in voluntary service to the Town.

3. Terms of Office.

Members of the commission shall serve two-year staggered terms. Members shall serve no more than ~~two~~ four consecutive terms. ~~In order to create staggered terms, five of the first members appointed shall serve four year terms and four of the first members appointed shall serve two year terms.~~ All members shall serve until their successors are duly appointed and qualified. Any vacancies occurring shall be filled by the Town Board of Aldermen for the unexpired term.

4. Attendance.

All members shall attend commission meetings on a regular basis. If any member misses more than three (3) consecutive meetings, or does not attend at least 75% of the meetings in one calendar year he may be replaced at the discretion of the public art commission.

5. Selection of Officers.

The commission shall select annually from among its members a chair and vice-chair.

6. Rules.

The commission shall adopt rules governing the time and place of meetings, voting requirements and the appointment of committees.

7. Advisory function.

The commission shall serve in an advisory capacity to the Town Board of Aldermen, the Town Manager and the Director of Public Works on matters pertaining to or affecting Public Art within the Town.

8. Staff support.

The Director of Public Works shall serve as the town staff member specifically charged with the responsibility of carrying out the planning, implementation and coordination with other agencies, organizations and advisory commissions of all projects undertaken by the commission.

9. Purposes; responsibilities and powers.

- A. Subject to such limitation as may be imposed by laws or regulations, the commission shall serve as an advisory commission to the Town Board of Aldermen for the following purposes in order to further the public welfare:
 - 1. Recommend guidelines and procedures for the planning, development, acquisition, display and maintenance of Public Art, which interprets the cultural, historical, natural and human resources of the Waynesville community and surrounding region.
 - 2. Recommend guidelines and procedures for the establishment of a Public Art Fund administered by the Town of Waynesville. This includes funds from Town appropriations and all funds donated to the Town by private or other sources, such as through public and private grant programs. The fund shall be used for the selection, commissioning, acquisition, installation, maintenance, administration and insurance of works of art as well as for publicity and education pertaining to public art.
 - 3. Recommend procedures and guidelines for the acceptance of gifts of money and art to the Town Board of Aldermen and acknowledge the gift to the donor and make recommendations to the Board for appropriate recognition.
 - 4. Plan and organize fundraising events and campaigns to raise funds for the purchase of public art.
 - 5. Recommend expenditures from the Public Art Fund for approval by the Board of Aldermen, for the following:
 - a) Acquisition of artwork through commission or purchase.
 - b) Direct costs incurred in the relocation or conservation of an artwork owned by the Town.

- c) Site preparation.
 - d) Collection management.
 - e) Program and project planning.
 - f) Artist and artwork selection-related expenses, including proposal honoraria.
6. Recommend guidelines and procedures for the acquisition of artwork, selection of artists and management of projects.
 7. Coordinate with the Town Attorney and Town Purchasing Supervisor to expedite the artist's contract or donated artwork for approval by the Board of Aldermen.
 8. Provide background information about the inspiration and display of public artworks through appropriate signage, brochures and digital media.
 9. Provide opportunities for the community to participate in the public art process.
 10. Inventory Public Art annually to ensure that the conditions and standards of Public Art are being met and report their condition to the Director of Public Works, including recommendations for maintenance, repair or deaccessioning when appropriate.
 11. Encourage pedestrian activity through human-scale public art placements where appropriate.
 12. Provide for the incorporation of public art in public buildings, parks, building facades, entry corridors, transportation projects and other forms where appropriate.
 13. Provide coordination with the Downtown Waynesville Association, Haywood County Arts Council, Waynesville Historical Commission, ~~Waynesville Appearance Commission~~ and other organizations interested in public art.
 14. Provide an orientation program for new commission members on the role and responsibilities of the commission, the role and function of public art and its relationship to the unique cultural and environmental heritage of Waynesville and surrounding region.
- B. To carry out the purposes stated in subsection (A) of this section, the commission shall have the powers as follows:
1. Appoint advisory task forces to make recommendations to the entire commission relative to specialized studies or projects, which further the implementation of the purposes of this section.
 2. Appoint a commission member as chair and a secretary to keep and maintain records of the commission subject to Town Ordinances.
 3. Perform those tasks necessary and convenient to carry out the purposes of this commission.

10. Meetings.

Meetings shall be held on the date and time as referenced in the Town of Waynesville Boards and Commission Manual and may from time to time be updated or amended. ~~The commission shall establish its meeting schedule.~~ Notice of meetings shall be provided as required by the North Carolina Open Meetings Law.

11. Annual reports to the Town Board of Aldermen.

The commission shall submit to the Town Board of Aldermen an annual report of its activities and recommendations and shall file with the Town Clerk copies of its minutes and proceedings of its regular and special meetings.

ORDINANCE 04-14

AMENDMENT TO CHAPTER 2 OF THE CODE OF ORDINANCES OF THE TOWN OF WAYNESVILLE

WHEREAS, the Board of Aldermen of the Town of Waynesville desires to amend the Code of Ordinances as it relates to the Public Art Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE Board of Aldermen of the Town of Waynesville, North Carolina that Chapter 2, Article IV: Boards, Commissions, and Committees be amended as follows by adding highlighted areas:

CHAPTER 2: ADMINISTRATION

ARTICLE IV. BOARDS, COMMISSION, AND COMMITTEES

DIVISION 5: PUBLIC ART COMMISSION

There shall be a public art commission established under rules and regulations adopted by the board of aldermen.

Adopted this 27th day of May, 2014.

TOWN OF WAYNESVILLE

ATTEST:

Gavin A. Brown
Mayor

Amanda W. Owens
Town Clerk

APPROVED AS TO FORM:

Woodrow H. Griffin
Town Attorney

NOTICE OF PUBLIC HEARING AMENDMENT TO CODE OF ORDINANCES

TAKE NOTICE, that the Town of Waynesville Board of Aldermen will hold a public hearing at its regular meeting on May 27, 2014 at 7:00 PM, or as soon after as possible, in the Board Room of Town Hall at 9 South Main Street, Waynesville, NC to consider amendment of the Town of Waynesville Code of Ordinances regarding composition and meeting schedules of town boards and commissions as an addition to Chapter 2, Article IV, Division 1 sections 2-126 through 2-128; and to consider adoption of a Boards and Commissions Manual.

The proposed ordinance changes and a draft copy of the boards and commissions manual are available in the Town Clerk's office.

Persons wishing to be heard at the public hearing are asked to be present.

This the 15th Day of May, 2014.

____s/ Amie Owens_____
Town of Waynesville

By: Amie Owens, Town Clerk